TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1955

No. 38

RAYMOND C. ARMSTRONG, PETITIONER,

vs.

MARY R. ARMSTRONG, GENERAL MOTORS CORPORATION, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO

PETITION FOR CERTIORARI FILED MARCH 9, 1955
CERTIORARI GRANTED APRIL 25, 1955

No. 33956

Supreme Court of Ohio

MARY R. ARMSTRONG,
Plaintiff-Appellee,

v.

RAYMOND C. ARMSTRONG,
Defendant-Appellant,

GENERAL MOTORS CORPORATION, ET AL.,
Defendants-Appellees.

Appeal from the Court of Appeals of Hamilton County.

RECORD

ROBERT N. GORMAN,
GORMAN, SILVERSTEEN & DAVIS,
Traction Bldg., Cincinnati 2, Ohio,
Attorneys for Defendant-Appellant.

WALTER K. SIBBALD,
HEADLEY, SIBBALD & TAFT,
First Natl. Bank Bldg., Cincinnati 2, Ohio,
Attorneys for Plaintiff-Appellee.

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IN THE COURT OF COMMON PLEAS OF HAMILTON COUNTY, OHIO.

MARY R. ARMSTRONG,

Plaintiff,

vs.

RAYMOND C. ARMSTRONG, GENERAL MOTORS CORPORATION, A DELAWARE CORPORATION, STANDARD BRANDS, INCORPORATED, A DELAWARE CORPORATION, HUDSON MOTOR CAR COMPANY, A MICHIGAN CORPORATION, MURRAY CORPORATION OF AMERICA, A DELAWARE CORPORATION; NORTH AMERICAN AVIATION, INCORPORATED, A DELAWARE CORPORATION, TRANSCONTINENTAL & WESTERN AIR, INCORPORATED, A DELAWARE CORPORATION,

Defendants.

AMENDED PETITION.

[Filed December 19, 1952.]

The plaintiff, Mary R. Armstrong, for her amended petition, says that she has been a resident of the state of Ohio for more than a year, and of the county of Hamilton for for than ninety (90) days next preceding the beginning of this action; that she and the defendant, Raymond C. Armstrong, were married at Cincinnati, Ohio, on the eighteenth day of June, 1917, and that no children have been born of said marriage.

Plaintiff says that she at all times has conducted herself toward said defendant as a dutiful and faithful wife; and that defendant, Raymond Armstrong, in disregard of his marital duties has been guilty of gross neglect of duty and extreme cruelty toward the plaintiff; that in October, 1950, plaintiff separated from said defendant in consequence of his ill treatment of her; and that on or about the sixteenth day of April, 1961, in case No. 140311 in the Circuit Court of the Eleventh Judicial District in and for Dade county, Florida, the defendant filed a complaint in which he prayed for a divorce from plaintiff, in which complaint he alleged that this plaintiff at and prior to their marriage was wholly without business training; that in all of the thirty-four (34) years of marriage this plaintiff never contributed any active work in the business in which he was engaged, and never shared in any business activities with him; that this plaintiff contributed nothing to the enhancement of his material assets; that this plaintiff had an ungovernable temper and had shot a revolver at him; that as early as 1943, she was beginning to plan a separation; that she wrongfully induced him to place certain bank accounts, and certain safety deposit boxes and their contents in the joint names of the parties, all for the purpose of thereafter taking the same into her exclusive possession; that she did not have any title or claim to any part of the stocks, bonds or the money in said boxes and accounts, and that she wrongfully sought to convert the same to her own benefit; that in the month of July, 1948, without his having given her any cause so to do, she had left him, and at all times thereafter, without his consent, had retained in her possession certain of the monies and securities which she had withdrawn from said joint accounts and boxes at the time

of that separation; that she had promised at the time of and following a reconciliation in September 1948, to return said monies and securities to him and had failed to do so, except for about $7,000.00 which was returned to their joint accounts; that said attempted reconciliation thereafter failed wholly because of her wrong-doing; that in October 1950, without his having given her any cause so to do, she left their residence in Miami, Florida, and went to parts unknown, and thereafter, through her attorney, had refused to disclose where she was living. Plaintiff further says that the defendant signed and verified said complaint containing the foregoing allegations, well knowing that said allegations were false and that the prosecuting of said complaint to judgment would perpetrate a fraud upon said court; that on or about the twenty-fifth day of June, 1951, the defendant appeared before a special master in chancery to whom said cause had been referred by said court and gave his testimony, tending to prove said allegations, which testimony the defendant knew to be false. That thereafter said special master filed with said court his report, incorporating therein a transcript of the defendant's said testimony, in which report said special master found this defendant was entitled to a decree of divorce; and that said special master, in the concluding paragraph of his said report said:

> "A special master's fee in this cause has been settled by an agreement between the attorney for the plaintiff and your master".

Thereupon the said cause came on to be heard by said court upon said complaint, the testimony taken before the special master and upon the master's report, upon consideration of which the said court, on or about October 2, 1951, entered

a decree granting a divorce in favor of the defendant. Plaintiff says she was not served with summons, and did not enter her appearance in said action.

Plaintiff further says that in the year 1914 she and the defendant started a business in which she furnished the greater part of the initial capital, which business was continued through their joint efforts before and after said marriage; and that from the starting of said business and throughout their married life, she has contributed her efforts and her funds toward the accumulation of property which has come into their possession and ownership including, among other property, certain certificates of capital stock issued in the name of the defendant as follows:

1125 shares of the capital stock of General Motors Corporation, a Delaware corporation, represented by certificates numbered and in the amounts as follows: C612-221 for 25 shares, =D335-665 for 100 shares, D-335-666 for 100 shares, =D335-667 for 100 shares, =D335-668 for 100 shares, =D335-669 for 100 shares, =D335-670 for 100 shares, =D335-671 for 100 shares, =D335-672 for 100 shares, =D335-673 for 100 shares, =D335-674 for 100 shares, as to which certificates the owners are entitled, upon surrender thereof, to new certificates upon the basis of two new shares for each of the above described shares.

250 shares of the capital stock of Standard Brands, Incorporated, a Delaware corporation, represented by certificate numbered and in the amounts as follows: =N 12749 for 100 shares, =N 12750 for 100 shares, and =N.F. 72990 for 50 shares.

350 shares of the capital stock of Hudson Motor Car Company, a Michigan corporation, represented by certificate numbered and in the amounts as follows: =A 102797 for

100 shares, =A 102798 for 100 shares, =A 102799 for 100 shares, and =F 169852 for 50 shares.

300 shares of the capital stock of Murray Corporation of America, a Delaware corporation, represented by certificate numbered and in the amounts as follows: =NY 84127 for 100 shares, =NY 84126 for 100 shares, and =NY 80740 for 100 shares.

550 shares of the capital stock of North American Aviation, Incorporated, a Delaware corporation, represented by certificate numbered and in the amounts as follows: =WB1 522 for 100 shares, =WB1 523 for 100 shares, =WB1 524 for 100 shares, =WB1 526 for 100 shares, =WB1 519 for 100 shares, and =WA1 for 50 shares.

50 shares of the capital stock of Transcontinental & Western Air, Incorporated, a Delaware corporation, represented by certificate numbered and in the amounts as follows: =AZ0 428 for 50 shares.

Plaintiff says she holds the foregoing certificates, unendorsed, in her possession, in Hamilton county, Ohio, within the jurisdiction of this court; that said defendant corporations, and each of them, will not cancel and reissue said shares so that plaintiff may have alimony in the defendant Raymond Armstrong's share thereof, unless ordered by the court; and that she makes said corporations parties defendant herein so that the court may award to her such alimony as the court deems reasonable and proper out of the defendant's interest in said certificates of stock, any accumulations thereto and any dividends thereon, now or hereafter payable; and so that such orders may be made as the court deems proper concerning the cancellation and reissue of said certificates by each of said defendant corporations.

Wherefore, plaintiff prays that she be divorced from the defendant; that she be awarded alimony temporary and permanent and her expenses herein; that the defendant Raymond C. Armstrong and said defendant corporations be required to cancel and reissue the certificates of stock hereinbefore described in such division thereof as the court may deem proper; and for her costs herein and such other relief as is proper.

WALTER K. SIBBALD,
Attorney for Plaintiff.

[Duly verified.]

ANSWER OF DEFENDANT RAYMOND C. ARMSTRONG.

[Filed January 2, 1953.]

Comes now the defendant, Raymond C. Armstrong, and for answer to the amended petition of plaintiff herein, admits that he and the plaintiff were married at Cincinnati, Ohio, on the eighteenth day of June, 1917, and that no children were born as the issue of said marriage.

Defendant admits that on or about the sixteenth day of April, 1951, in case No. 140311, in chancery, on the docket of the Circuit Court of the Eleventh Judicial Circuit, in and for Dade county, Florida, he filed a complaint in which he prayed for a divorce from plaintiff and in which complaint he made the allegations set forth on the second page of plaintiff's amended petition and admits that he appeared before a special master in chancery to whom said cause had been referred by said court and gave his testimony, tending to prove said allegations; and that thereafter said special master filed with said court his report, incorporat-

ing therein a transcript of the defendant's said testimony, in which report said special master found that this defendant was entitled to a decree for divorce; and that thereupon said cause came on to be heard by said court, upon said complaint; the testimony taken before the special master and upon the master's report, upon consideration whereof, on or about October 2, 1951, entered a decree granting a divorce in favor of this defendant from plaintiff. Defendant denies that the allegations set forth in his complaint in his suit for divorce as aforesaid were false; denies that the testimony that he gave in said cause was false, but on the contrary, says that said allegations and testimony were true.

Defendant denies that plaintiff was not served with summons in said action pending in the Dade county Circuit Court, said defendant having been duly and legally served with summons in said action according to the law of the state of Florida, and that by reason thereof said court had full and complete jurisdiction over the subject matter of said action and over the persons of this defendant and plaintiff.

Defendant denies that in the year 1914 defendant and plaintiff started a business in which plaintiff furnished the greater part of the initial capital; denies that the said business was continued through the joint efforts of plaintiff and defendant before and after said marriage; and denies that from the starting of said business and throughout their married life plaintiff contributed her efforts and her funds towards the accumulation of property which has come into their possession and ownership, including among other property, the certificates for the capital stock of the corporations set forth on page 4 of plaintiff's amended petition.

Defendant denies that plaintiff at all times conducted herself towards defendant as a dutiful and faithful wife and denies that he, in disregard of his marital duties, has been guilty of gross neglect of duty and extreme cruelty towards plaintiff, but on the contrary, says that he has always conducted himself as a dutiful and faithful husband, but that plaintiff, in disregard of her marital duties, has been guilty of gross neglect of duty and extreme cruelty towards defendant.

Defendant further says that by the consideration of the Circuit Court of the Eleventh Judicial Circuit in and for Dade county, Florida, a court of competent jurisdiction over the subject matter and the parties, in said action No. 140311, in chancery, said court granted an absolute divorce to this defendant from this plaintiff, from which no appeal was taken by this plaintiff, and that the same has become final and absolute and that by reason thereof, plaintiff cannot maintain this action against said defendant for divorce.

Defendant further says that the property accumulated by him were the results of his own efforts and that plaintiff has not contributed any property, through inheritance or by way of active work in any business conducted by defendant and has never shared in any business activities of defendant.

Defendant further says that upon the insistence and demand of plaintiff, he placed large sums of money in joint bank accounts, in the joint names of defendant and plaintiff, in Cincinnati, Ohio, and Miami, Florida; opened joint safe deposit boxes in Cincinnati, Ohio, and Miami, Florida, in the joint names of defendant and plaintiff; placed the title to a farm in Hamilton county, Ohio, and a farm in

Clermont county, Ohio, in the joint names of defendant and plaintiff; conveyed an undivided one-half interest in large numbers of lots in Springfield township, Hamilton county, Ohio, which were given to him by his father, to plaintiff; had mortgages to secure the unpaid purchase price from the sale of properties which belonged to him alone, to be placed in the joint names of himself and plaintiff, from which plaintiff has been receiving the income.

Defendant furtfier says that in an action in partition brought by plaintiff against this defendant, the same being No. A-127053 on the docket of the Court of Common Pleas of Hamilton county, Ohio, there is now on deposit with the sheriff of Hamilton county, Ohio, a sum of money in excess of $20,000.00, of which plaintiff will be entitled to one-half thereof and in addition thereto, there are a large number of lots involved in said partition action which have not yet been sold and from the proceeds of the sale of said lots; plaintiff will receive a substantial sum of money, for her half interest in said lots, the exact amount of which at this time cannot be determined.

Defendant further says that in September of 1946, while plaintiff and defendant were living together as husband and wife, plaintiff drew out of the joint bank account of the parties hereto in the Cincinnati Bank & Trust Company, the sum of $1,000.00 in said account, without the consent or approval of defendant. That on or about July 2, 1948, although plaintiff and defendant were husband and wife but had separated, plaintiff drew a check to her own order on the joint bank account of the parties hereto in the Cincinnati Bank & Trust Company, in the amount of $10,800.00, and withdrew from the joint safe deposit box in said bank,

the sum of $4,800.00, without the consent or approval of defendant; that on July 6, 1948, plaintiff drew a check to her own order on the joint bank account of the parties hereto in the First National Bank of Miami, Florida, for $500.00; on July 9, 1948, plaintiff drew a check to her own order on the joint bank account of the parties hereto in the Loveland National Bank, Loveland, Ohio, for $700.00, without the consent or approval of defendant; also withdrew from the safe deposit box in the joint names of the parties hereto in Miami, Florida, certain jewelry of the approximate value of over $5,000.00, and U. S. "E" bonds in their joint names of approximate value of $3,000.00, all of which she has converted to her own use. Plaintiff also withdrew from the safe deposit box in the joint names of the parties hereto in Miami, Florida, cash in a substantial amount unknown to defendant, and the stock certificates for the stocks set forth on page 4 of plaintiff's amended petition, which stocks are of the value in excess of $100,000.00, and which she has converted to her own use and refused to deliver to defendant, although they are his own property and she has no interest in the same, as a result of which defendant has been deprived of the income therefrom since the filing of this action.

Defendant further says that the withdrawal by plaintiff from the joint safe deposit box of the parties hereto in Miami, Florida, without the permission, consent or approval of defendant, constitutes embezzlement of defendant's property, under Sec. 811.01 of the Florida 1941 statutes, as construed by the Supreme Court of Florida in the case of State of Florida v. Herndon, 158 Fla. 115, which provides that:

> "Husband can be held guilty of larceny of the separate property of wife in view of the constitutional

abrogation of the common law unity of husband and wife, insofar as it relates to her separate property: F. S. A. Const., Article II, Sec. 1; F. S. A. Secs. 708.03, 708.04, 708.06, 708.07, 708.09, 708.10."

Defendant asks the court to take judicial notice of the laws of the state of Florida under the uniform judicial notice of foreign law (Secs. 12102.31, et seq., General Code of Ohio).

For further answer, defendant denies each and every allegation in plaintiff's amended petition contained; not hereinbefore specifically admitted to be true and further says that by reason of the allegations aforesaid, plaintiff is not entitled to a divorce or alimony from defendant and that plaintiff should account to defendant for at least one-half of the monies withdrawn by plaintiff from the joint bank accounts of the parties hereto and for the jewelry, and should be required to return to defendant the certificates of stock which she has converted, as aforesaid.

Wherefore, defendant prays that plaintiff's amended petition be dismissed; that the court order plaintiff to deliver up to defendant the certificates of stock aforesaid and the jewelry aforesaid, which she has converted to her own use; that the court make an equitable division between the parties hereto of the monies withdrawn by plaintiff from the joint bank accounts of the parties hereto, as aforesaid, and for all further relief, both legal and equitable, to which this defendant may be entitled in the premises.

JULIUS R. SAMUELS,
Attorney for Defendant.

[Duly verified.]

REPLY.

[Filed March 31, 1953.]

For her reply to the answer of Raymond C. Armstrong, plaintiff admits the allegations made concerning case No. A-127053 on the docket of this court, and denies each and every other allegation in said answer, excepting only such as are admissions of the allegations of plaintiff's petition.

Wherefore, having fully replied, plaintiff renews the prayer of her petition.

WALTER K. SIBBALD,
Attorney for Plaintiff.

[Duly verified.]

MOTION TO SET ASIDE JUDGMENT AND FOR NEW TRIAL.

[Filed July 21, 1953.]

Comes now the defendant Raymond C. Armstrong by his attorneys, Julius R. Samuels and Benjamin S. Schwartz, and moves the court to set aside the judgment heretofore entered herein and for a new trial, for the following reasons, to wit:

(1) The judgment is contrary to the evidence.

(2) The judgment is contrary to law.

(3) The award of alimony granted plaintiff is excessive.

(4) The court erred in admitting evidence offered by plaintiff over the objections of defendant.

(5) The court erred in excluding evidence offered by defendant.

(6) Other errors apparent of record.

JULIUS R. SAMUELS,
BENJAMIN S. SCHWARTZ,
Attorneys for Defendant.

TRANSCRIPT OF DOCKET AND JOURNAL ENTRIES.

1952, February 1. Petition and praecipe filed and summons issued.

1952, February 11. Summons returned endorsed received by Dan Tehan, sheriff, Hamilton county, Ohio, 2/1/52 8:58 p. m.

Cincinnati, Ohio, February 5, 1953. Served the within named defendant Standaird Brands Inc. by and through J. Becksmith my duly authorized and acting deputy sheriff, by leaving a true copy of this writ with all the endorsements thereon at its usual place of business and in the hands of Pauline Thomason, statutory agent the person in charge, no chief or other officer being found. Also served The Transcontinental & Western Aid Corp., a corporation by and through O. Kline my duly authorized and acting deputy sheriff by leaving a true copy of this writ with all the endorsements thereon at its usual place of business and in the hands of Marjorie Cummings head ticket agent, the person in charge, no chief or other officer being found. The other within named defendants not found in my county. Dan Tehan, sheriff, J. O'Gallagher, deputy.

1952, February 11. Sheriff's return, state of Ohio, Cuyahoga county. Received this writ on the fourth day of February, 1952 at 11:20 a. m. and pursuant to the command therein on the fifth day of February, 1953 I served the within named General Motors Corp., a Delaware corp., by handing to Davis M. Donley, statutory agent, a true and certified copy thereof with all the endorsements thereon. In compliance with the General Code of Ohio 8623-139. Also on the same date I served the within

named North American Aviation Inc., a Delaware corporation, by handing to Davis M. Dorley, statutory agent a like copy of the writ within. In compliance with the General Code of Ohio Sec. 8623-129. Joseph M. Sweeney, sheriff, Robert E. Quinlan, deputy.

1952, March 28. Praecipe for alias summons filed. Summons issued by mail.

1952, March 28. Affidavit in service by publication filed.

1952, April 4. Proof of mailing publication filed.

1952, May 6. Motion to strike from petition; or in the alternative, to make petition definite and certain filed.

1952, May 7. Motion for temporary alimony and expenses filed.

1952, May 9. Affidavit in proof of publication filed.

1952, May 12. Min. 3534. Entry approving publication. It appearing to the court that a proof of publication of notice of pendency and object of this action has been filed and is in all respects regular and according to law, the same is hereby approved.

1952, August 1. Deposition filed.

1952, October 7. Motion of defendant to release corporation dividends filed.

1952, December 8. Entry, Min. 1572, overruling motion to strike and granting motion to make definite and certain. Plaintiff granted 10 days in which to amend petition. And defendant given 15 days from filing of amended petition to plead thereto.

This cause having come on to be heard on the motion of the defendant to strike from the petition, or in the alternative, make the petition definite and certain, the court being advised, finds said motion to strike not to be well taken, and it is hereby overruled.

The court further finds the alternatives motion to make the petition definite and certain, is well taken, and should be granted. It is therefore ordered that plaintiff make her petition definite and certain, by setting forth in detail, the facts upon which she claims the said defendant "filed a false and fraudulent complaint in which he prayed a divorce from plaintiff"; and also setting forth in detail, the facts and details of the claim asserted by plaintiff, "upon false and fraudulent testimony given by him in support of the allegations of said complaint caused said court to enter a final decree in favor of the defendant."

1952, December 8. Min. 1572. Entry overruling motion for temporary alimony and expenses.

This cause having come on to be heard on the motion of the plaintiff for an order requiring the defendant, Raymond C. Armstrong to pay to the plaintiff alimony pendente lite and her expenses, the court being advised overruled said motion, to which plaintiff reserves her exceptions.

1952, December 8. Min. 1572. Entry overruling motion to release corporation dividends.

This cause having come on to be heard on the motion of the defendant, Raymond C. Armstrong, for an order requiring General Motors Corporation, and North American Aviation, Inc., to release to said defendant, dividends withheld, and pay the dividends hereafter accruing, to said defendant, the court being fully advised finds the said motion not to be well taken and overrules the same; to which said defendant reserves his exceptions.

1952, December 19. Min. 1775. Leave given to file amended petition; amended petition filed by leave.

1953, January 2. Answer of defendant Raymond Armstrong filed.

1953, February 3. Deposition filed.

1953, March 6. Deposition filed.

1953, March 31. Min. 1528. Leave given to file reply of Mary R. Armstrong; reply of Mary R. Armstrong filed by leave.

1953, March 31. Min. 1528. Application for official stenographer filed and allowed; Miss Dorothy Reed, official stenographer.

Walter K. Sibbald, attorney for plaintiff and J. R. Samuels, attorney for defendant request the services of an official stenographer to make a full report of the testimony and proceedings in this case. Signed Walter K. Sibbald and J. R. Samuels.

The above request for an official stenographer is granted and Miss Dorothy Reed is appointed to make a full report of the testimony and proceedings.

1953, July 3. Min. 1841. Entry ordering Miss Dorothy Reed, official shorthand reporter, to transcribe the testimony and proceeding in this case. Costs to be taxed in the costs provided by the law $86.40.

It is hereby ordered that Dorothy M. Reed, official shorthand reporter, transcribe the testimony and proceedings in this case, for the use of the court. The expense thereof to be taxed in the costs as provided by law.

1953, July 18. Judgment entry, Min. 144, denying divorce and awarding alimony and expenses to plaintiff.

July 18, 1953. This cause came on to be heard on the amended petition, the answer of Raymond C. Armstrong, the reply of the plaintiff and the testimony of the parties and their witnesses, and the court being fully advised finds the plaintiff, Mary R. Armstrong, was a resident of the state of Ohio for more than one (1) year and of the county

of Hamilton for more than ninety (90) days next preceding the commencement of this action; and that plaintiff and the defendant, Raymond C. Armstrong, were married at Cincinnati, Ohio on the eighteenth day of June, 1917 and that no children have been born of said marriage.

The court further finds that on October 2, 1951, the Circuit Court of the Eleventh Judicial Circuit in and for Dade county, Florida in case number 140311-H, in chancery, pending in said court entered a decree granting a divorce a vinculo matrimonii in favor of Raymond C. Armstrong and against Mary R. Armstrong, in which action the plaintiff here, Mary R. Armstrong, neither entered an appearance nor was personally served with summons.

The court further finds from all of the evidence in this cause that plaintiff, Mary R. Armstrong, were it not for said Florida decree, would be entitled to a judgment granting to her a divorce in this action, and that this court is required to, and does give full faith and credit to said Florida decree and is thereby required to, and does deny the prayer of the plaintiff, Mary R. Armstrong, for a divorce.

The court further finds that the defendant, Raymond C. Armstrong, is the owner of property described as follows:

1. Lots 12 and 13, block 11 of Spring Garden according to the plat thereof recorded in plat book 5, at page 38 of the public records of Dade county, Florida;

2. All the furniture, household goods and the fixtures contained in the residence situate on the lots described in the foregoing paragraph;

3. All lots in the name of Raymond C. Armstrong, (not including lots jointly owned with plaintiff), in the addition to Woodlawn Terrace Subdivision, recorded in plat

book 33, pages 4 and 5 of the Hamilton county, Ohio records;

4. Ten (10) acres of land in the Ruscan Colony Farm in Tampa, Florida;

5. About twenty (20) acres of land in the Isle of Pines;

6. The shares of capital stock described in plaintiff's amended petition including stock dividends heretofore declared thereon and unpaid dividends heretofore declared thereon;

and that the plaintiff, Mary R. Armstrong, is entitled to alimony as prayed for in her amended petition and, therefore, awards to her out of the foregoing property and out of property hereinafter described in her possession heretofore claimed by said defendant as alimony, the following:

1. that she shall have and retain as her own property whatever balance remains in her possession of the moneys withdrawn by her in the month of July, 1948 from the joint bank accounts of the parties in the Cincinnati Bank and Trust Company, The First National Bank of Miami, Florida, and The Loveland National Bank of Loveland, Ohio, together with the cash withdrawn from the safe deposit box in the joint names of the parties in Miami, Florida, and the United States savings bonds which she then took into her possession, all of the foregoing being more fully described on page 4 of the answer of the defendant, Raymond C. Armstrong; and the said defendant is hereby deprived of any claim to or ownership in said withdrawals, cash and bonds;

2. that she shall have and retain as her own all jewelry now in her possession consisting of 1 cocktail ring with

diamond and sapphire, 1 diamond ring with center diamond, 1 necklace, 1 ladies diamond ring, 1 ladies watch with 109 diamonds, 1 fancy ring platinum top gold shank, 1 diamond bracelet with 70 diamonds, 1 diamond brooch with 23 diamonds, 1 diamond brooch with 10 diamonds, and the defendant, Raymond C. Armstrong, is hereby deprived of any claim to or ownership in said jewelry;

3. that plaintiff shall have and the defendant, Raymond C. Armstrong, is hereby ordered to cause to be transferred to her one thousand two hundred and fifty (1,250) shares of the $5 par value capital stock of General Motors Corporation, together with any dividend or dividends which may be declared on said number of shares after the entering of this judgment and prior to the transfer of said shares to plaintiff. In the event the defendant, Raymond C. Armstrong, fails to cause said shares to be so transferred to plaintiff, such failure, when this judgment becomes final, may be reported to the court and an application made for such order or orders as may be necessary to enforce a compliance with this order. When the said shares shall have been transferred the remaining shares of capital stock of the various defendant corporations as described in plaintiff's amended petition, shall be delivered to the defendant, Raymond C. Armstrong, free of any claim by the plaintiff thereto.

Upon the application of the plaintiff for an allowance to her for her attorney fee and expenses, it is ordered that the defendant, Raymond C. Armstrong, pay to the plaintiff the amount of two thousand five hundred dollars ($2,500.00) for such expenses.

It is further ordered that the plaintiff and defendant, Raymond C. Armstrong, shall each pay one-half ($\frac{1}{2}$) of the costs herein.

Each of the parties is hereby allowed an exception.

1953, July 21. Motion to set aside judgment and for new trial filed.

1953, October 19. Min. 192. Entry overruling motion to set aside judgment and for a new trial.

This cause came on to be heard on the motion of the defendant, Raymond C. Armstrong, to set aside the judgment heretofore entered herein and for a new trial and was argued and submitted. The court being fully advised finds said motion not to be well taken and overrules the same, to all of which said defendant reserves his exception.

1953, November 4. Notice of appeal on questions of law filed.

1953, November 4. Praecipe for transcript of docket and journal entries filed.

1953, November 6. Notice of cross appeal filed.

[Duly certified.]

Supplemental Transcript.

1953, November 24. Bill of exceptions filed, praecipe for notice of filing filed.

1953, December 2. Notice of filing bill of exceptions returned endorsed. Received by Dan Tehan, sheriff, Hamilton county, Ohio, November 25, 1953, 12:39 a. m.

Cincinnati, Ohio, December 1, 1953. Served the within named Walter K. Sibbald by delivering to him personally a true copy of this writ with all the endorsements thereon. Dan Tehan, sheriff, J. O'Gallagher, deputy.

1953, December 3. Notice of filing of bill of exceptions returned endorsed: Sheriff of Cuyahoga county.

Received this writ on the twenty-seventh day of November, 1953 at 11:33 a. m. and pursuant to the command therein, on the third day of December, 1953 I served the within named General Motors Corp., a Delaware corp. by handing to David M. Donley, statutory agent, a true and certified copy thereof with all the endorsements thereon, in compliance with the General Code, of Ohio 8623-129. Joseph M. Sweeney, sheriff, William M. Segal, deputy.

1953, December 14. Bill of exceptions transmitted to Judge Charles S. Bell.

1953, December 14. Bill of exceptions received from Judge Charles S. Bell.

1953, December 14. Bill of exceptions returned and filed.

1954, March 16. Mandate to Court of Common Pleas, judgment of affirmance.

1954, March 23. Application to direct cancellation of and re-issue of General Motors stock filed.

[Duly certified.]

BILL OF EXCEPTIONS.

[Filed November 24, 1953.]

Be it remembered that upon the trial of this cause, at the January, A. D. 1953, Term of the Court of Common Pleas, before the Honorable Charles S. Bell, a judge of said court, the following proceedings were had:

Morning Session, Tuesday, March 31, 1953, 10 o'clock.

The Court: I see there are two cases here, gentlemen; are they to be tried together?

Mr. Samuels: It was suggested at one time that they are interwoven. They cannot be consolidated, but it is possible that the divorce case may practically determine the other.

The Court: It seems to me that the decision in the divorce case will practically settle the other.

Mr. Samuel: I quite agree. I think it will.

Mr. Sibbald: Should not there be a stipulation that the evidence in the divorce case may be used as the evidence in the injunction case, without recalling the witnesses?

The Court: That is perfectly satisfactory to the court, if it is to counsel for both sides.

Mr. Samuels: We agree, except with the reservation that there may be some additional testimony.

Mr. Sibbald: I am not attempting to foreclose as to any additional evidence.

The Court: Let the record so show.

And thereupon the plaintiff, to maintain the issues upon her part, offered the following evidence:

Mary R. Armstrong (Mrs.),

being first duly sworn, testified as follows, to wit:

Direct Examination.

By Mr. Sibbald:

Q. Will you state your full name, Mrs. Armstrong? A. Mary Regina Armstrong.

Q. Where do you reside, Mrs. Armstrong? A. 815 Hermosa avenue, Price Hill.

Q. Mrs. Armstrong, how old were you when you met Ray Armstrong? A. I was fifteen years old.

Q. And how long did you go together before you were married? A. Ten years.

Q. At the time you met him, what sort of work was he doing? A. He was driving a horse and—two horses and a wagon for his father.

Q. And when was it that he, or he and you, began working on Stabler street in this city?

Mr. Samuels: I object, on the ground it is leading. We deny that they went to work together.

The Court: The form of the question is bad.

Q. State whether or not, Mrs. Armstrong, there was any time that you worked with Mr. Armstrong. A. I think approximately I started in 1914, and we worked together, Mr. Armstrong and myself.

Q. Where? A. 2162 Stabler street.

Q. And how old were you at that time? A. I was approximately, I will say 21 or 22 years old.

Q. And what sort of business was it? A. We applied solid rubber tires on wheels, for the Cincinnati Omnibus

Company, and baby buggy tires, and for the hospital carts, some small and some large.

Mr. Samuels: I object, and move that the answer go out.

The Court: Overruled.

Q. Will you tell the court how that business was started? What was its financial setup when it started? A. Mr. Armstrong, as I stated before, was working for his father and they had a quarrel of some sort, and he had a few buggies, and owned a horse and buggy. He had lost his money shortly before that, so he came into 2162 Stabler; and when he came to the house he told me he had left his father and about what things he had into this place on Stabler street. He said: "If I could get hold of some money, Kelley-Springfield and United States Tire have a lot of rubber I can buy cheap if I had the money." I asked him how much was needed, and he said: "Well, I could swing it for $250 but" he said, "I would like to get a small truck that I could use". I had no money of my own of course, so I asked my aunt, Nellie Sullivan, if she would let me have the $250 to give to Ray so we could start in the business. She gave me the $250 in cash; and I had a ring that my husband gave me when we were going together, a rather nice diamond, and I gave him the ring and the $250 with which he—the ring he told me he sold but he used the money, and this $250 I gave him, to buy the rubber with which we started our business on Stabler street.

Q. Now you say he had lost his money before that; how? A. Well, he went to the racetrack and one of the men that was over there—I don't know what they do—

Q. He lost it at the racetrack? A. Yes, sir.

Q. After the rubber was purchased, what part if any did you play in the operation of that business? A. Well, it was

an inexpensive arrangement, we used a table and put it on, and he showed me how to do the work; and I answered the phone, and if anyone came with wheels; if he wasn't there I worked on the wheels while he was gone, and sometimes I had them completed and sometimes not.

Q. How long did you continue to do what you have described on Stabler street? A. Well, until 1917 we were on Stabler street.

Q. And during that time you may state whether or not you continued throughout the period to do the work you have described? A. I done it the entire time Mr. Armstrong and I were there on Stabler street, approximately 1914 or early '15, until we moved over on Clark street. We were married and moved to Clark street.

Q. State whether or not during that period you were paid any salary? A. I was never paid a penny; we were working together, he and I, for our future.

Q. Now what about moving to Clark street? What time was that? A. We moved over there in June of 1917.

Q. When were you married? A. I was married the eighteenth of June, 1917.

Q. And where did you go to live? A. We moved—it was a lovely apartment upstairs, and we moved up there over the business we had downstairs.

Q. From whom was it purchased? A. George M. Shaffer.

Q. What was the name of the business? A. He called it the Bulldog Rubber Tire Company.

Q. State whether or not it was continued under that name? A. Yes, sir, we continued the business under that name.

Q. How long, Mrs. Armstrong, did you live in the apartment upstairs? A. Approximately six years. We sold the place.

Q. And during those six years you may tell just what you did, if anything, in connection with the operation of the business. A. I done all the office work. We had one boy who we paid six dollars a week to help, and Mr. Armstrong would go out after wheels and that sort of thing; and we always had carriage space we rented out; and I applied the tires with the help of the boy, and gave gasoline and sold accessories; and afterwards, quite a while, we got a small building across the street where Mr. Adrian is now, and my husband would go to the unclaimed freight and buy job lots and put them there, and it was across the street from the office, and I would show the goods and sell it.

Q. Will you tell us how regularly you did that? A. Mr. Sibbald, I done it every day and most every night. We kept the business open nearly every night, and sold bicycle accessories and different things that working people came and bought in the evening.

Q. For how much of this period was the unclaimed freight business operated? A. Well, I would say approximately maybe three, but I will say two, between two and three years we had this unclaimed freight business across the street.

Q. What was the condition of Mr. Armstrong's health during that period? A. He had two very bad hernias that would slip from the truss, and they put him to bed and he had to stay there.

Q. You may tell us to what extent that affected him in working. A. Of course they slipped down, and he had to go upstairs; and another thing; this was a long time ago,

and it was an old-fashioned garage, and he couldn't stand the fumes and became ill when the doors were closed; but it didn't affect me.

Q. Was there any time there was any help other than this boy? A. We had nobody that we paid. Sometimes if a man was there he could give a lift with a tire, or help push a car around or something, but no paid help but this small boy that we paid.

Q. Now when was it that that business was disposed of? A. 1922-or'03; approximately '22-or-'23, around in there.

Q. You may tell the court whether or not the business had made money. A. Yes, we made money.

Mr. Samuels: I object.

The Court: She has testified that she and the defendant in this case were the business. Objection overruled.

Q. To whom—or how was that business disposed of? A. As I stated, my husband's health wasn't too good, and he decided to go to Florida where Mr. Shaffer went. So we had an auction sale and disposed of everything we had including most of our furniture upstairs, everything except our solid rubber tires; and by that time the rubber tire business—except for baby buggies and things like that—automobiles had come in and there was not so much hearse work any more, and Mr. Armstrong wanted to sell the rubber tires separately. We didn't sell them at auction but sold them later.

Q. Tell us who prepared the list of stock for that sale? A. I prepared and catalogued everything for the auction.

Q. After the auction what was done with what remained of the business? A. Mr. Adrian had been out of work about a year, and—I don't know how it was done, whether he approached my husband or my husband him, to buy

the business. He said: "I will buy the rubber providing you teach me the business and I get this building across the street", which we did not own but rented from a Doctor Kalb.

Q. What part did you play in getting the business for Mr. Adrian and the building from Doctor Kalb? Did you play any part in that? A. Yes, sir. Mr. Armstrong came and said: "I think the deal is off". He said: "Doctor Kalb refused to give the building, and if my solid rubber goes at auction we will get nothing". I went to Doctor Kalb at his office—I think it was in the building where Shillito's garage is now, and I called him and made an appointment with him and went to see him and explained matters, and said—

Q. Did you get a promise from him to— A. Yes, sir, he promised me—he said: "Now Mrs. Armstrong, you can go back and tell Mr. Adrian—"

Mr. Samuels: I object, may it please the court. This is a conversation between the witness and someone else.

The Court: Why is that incompetent? She is narrating the part she played in the business.

A. (Continued) So Doctor Kalb let Mr. Adrian have the building.

Q. How had you had it—ownership, lease, or what? A. We had no written lease. It was Doctor Kalb's lease.

Q. I mean across the street where the automobiles were kept, where the tire business was. What was that arrangement—was it ownership or lease? A. We rented it at first. We bought Mr. Shaffer's business and had to pay so much a month, and paid $125 a month rent for the building. Our lease read that we had the privilege of purchase, which we bought later. We bought the building.

Q. And when the business was sold out, was the building also sold? A. Yes; we sold the building.

Q. Now after you completed the sale of this business where did you and Ray Armstrong go? A. Well, we went to Miami, Florida.

Q. And how long did you remain in Miami at that time? A. Approximately nine months—eight or nine.

Q. And what if any work did Mr. Armstrong do during that period? A. He helped Mr. Shaffer, who had a used furniture business, and sold some new furniture too, and Mr. Armstrong helped him. We stayed with the Shaffers most of the nine months there.

Q. And after that where did you go? A. Came back to Cincinnati.

Q. And how long did you remain in Cincinnati? A. Well, I will say about a year or maybe not so long, but approximately a year, or maybe a little less.

Q. Did Mr. Armstrong do any work, engage in any business in that year? A. No, sir, he did not.

Q. Then where did you go? A. Well, Mr. Armstrong decided to go to the Isle of Pines, and we left Cincinnati and went to the Isle of Pines.

Q. Now will you tell us what you did, and what your husband did in the Isle of Pines? A. Well, we acquired a few pieces of property. As I said before, the conditions were very primitive. The apples I made pies from I had to send to Montgomery & Ward to have them shipped in.

Q. You say you had to send to Chicago for things; but how did you live? A. The house was all right, but we had really nothing much to do with. I had—a woman that had a hotel was kind enough to let us have two beds, and a restaurant keeper, when he got a new stove let us have

the old one. Most people used a five-gallon gasoline can to cook on.

Q. How long did you remain there? A. I think we remained there about four years.

Q. Where was the place you had in the Isle of Pines with reference to the Cuban penitentiary? A. The Cuban penitentiary was over near Santa Fe.

Q. How far away? A. Well, from where we lived, approximately 15 miles.

Q. Tell the court whether or not there was any danger that you encountered while living there.

Mr. Samuels: I don't want to be objecting all the time, but this is all immaterial, and I do object.

The Court: I can't see the materiality of whether there was any danger. Objection sustained.

Mr. Sibbald: I will withdraw it.

Q. Well Mrs. Armstrong, while you were in the Isle of Pines what if any business was carried on? What did you do? A. We acquired several groves that were very run down. The trees had wet feet, and were almost impossible to bring back. We bought them cheaply and took care of them, and had men that worked them. We planted on shares and mostly we grew watermelons for the New York market, besides the fruit that was on our trees.

Q. Now what occurred just before you left there? A. We had a devastating hurricane.

Q. What did that do to what you had accumulated? A. Wiped out one grove completely and ruined all of them. All Americans that could left the island.

Q. How long did you remain after the hurricane? A. We sent and got roofing to put a new roof on the house

The Court: This is quite entertaining, but what has it to do with the claim of this lady that she is entitled to a divorce from her husband and if not a divorce, alimony?

Mr. Sibbald: It only leads up to the accumulation of property and how they accumulated it. I am trying to shorten it as much as I can.

The Court: I don't think the visitation of a hurricane shows any accumulation of property.

Q. After you had left the Isle of Pines where did you go? A. We returned to Florida.

Q. And what was done with the property you had in the Isle of Pines? A. We traded most of it for Florida property, and traded some again for property up here.

Q. What property was acquired by trade in Florida? A. A house on Red road, and 2017 Northwest Thirty first street.

Q. And in whose name was that property taken in Florida? A. That property was taken in the name of M. R. Armstrong.

Q. You have given two street numbers; what were they? A. Two houses. We lived at the Thirty-first street house, in Miami, and Red road was in Coral Gables. We later had tenants in that.

Q. Will you tell us briefly what part you had in making trades? A. It was done through correspondence, and I did the correspondence.

Q. You say you acquired, in addition to this property in Miami and Coral Gables, some up here? Where was that? A. We acquired a 620 or 640 acre farm in Indiana, and 154 acres at Goshen; the house on Sheeb road and one in Newport, Kentucky, through trade.

Q. In whose name was, first the Indiana property? A. That I am not certain. It is in his name and my own name.

Q. And how much acreage was acquired on Sheeb road? A. Twenty-five acres.

Q. In whose name was that taken? A. Both names.

Q. What did you acquire in Neport? A. It was a two story house with two farms.

Q. And in whose name was it? A. In both our names.

Q. Now how did you acquire the acreage at Goshen? A. We partly traded the Indiana farm—part of it for the 154 acres in Goshen.

Q. What if any part did you play in making that trade? A. Well, I wrote to the man and he came out to see us. We were then on Sheeb road. Several times I wrote.

Q. Were you living on Sheeb road at the time? A. We were living on Sheeb road when we done business with this man.

Q. How much acreage did you acquire at first at Goshen? A. We acquired 154 acres. Quite a time after that we purchased a small farm on the side.

Q. In whose name was that taken? A. Both.

Q. When you subsequently purchased some 45 acres, in whose name was that taken? A. Where was that, Mr. Sibbald?

Q. At Goshen. A. In both names.

Q. How long did you continue to reside at Sheeb road? A. I think we stayed there about three years in the summer.

Q. Then where did you go after that? A. After that we went to Goshen.

Q. Now during that interval were you at any time in Miami? A. Oh, we went to Miami in the winter, yes, sir.

Q. And where was the residence in Miami during those three years, Mrs. Armstrong? A. We were on Thirty-first when we were on Sheeb road, and we were on Northwest Eighth street when we were at Goshen.

Q. What property was it that was sold in Florida before you built on Northwest road? A. Well, the house on Red road was sold; and a lot alongside of the home on Thirty-first street was sold; and a small piece of property, 48 feet by 12 in back of our house was sold; and we had a lot right off the trail at Northwest Eighth avenue that was sold.

Q. And those properties, in whose name were they? A. Part of them was in mine alone, and part in his name and in mine.

Q. From the proceeds of those sales, what did you do about building a residence there? A. Well, my husband wanted to build a house. We had a lot on the water, and we started to build, and later acquired another 50 feet where the boat house was.

Q. And in whose name was that acquired? A. The lot 13 where the house is is in both names, and 12 was Mary Armstrong and her husband Raymond.

Q. Now after that was built you continued to live there in the winter for how long? A. From 1944 I lived there, until the first trouble in '48. I went back then as you know, but I left permanently in 1950.

Q. And how long did you spend your summers at Goshen? A. That would vary. Some years it would be five months and sometimes six or a little longer.

Q. You may tell us whether or not you and your husband had been getting along well up until 1948? A. Well my husband—I wanted to get along with him, and I—

Mr. Samuels: I object.

Q. Had you been getting along, or not? A. Well, around 1947, the last part of 1946 and 1947 he began to change towards me.

Q. Describe what you mean by his beginning to change towards you. What did he do? A. He began to tell me he wasn't satisfied, and that he wanted somebody else. He proceeded to make my life very miserable in every way he could.

Mr. Samuels: I object, and ask that that answer be stricken.

The Court: I don't think it is important, one way or the other.

Q. Coming down to 1948, and particularly the months of June and July of 1948, what was your husband's behavior to you? A. Well, he continually struck me and ordered me from my home. Not only that; he made, I am positive, a definite attempt to maim me in Miami before we started up here in 1948.

Mr. Samuels: I move that that go out if the court please.

The Court: Overruled.

Mr. Samuels: Exception.

Q. Before you started to Goshen from Miami in 1948 what happened? Tell the court what you are referring to. A. I had a house full of antiques which I took care of and packed very carefully because of hurricanes. About two nights before we were to leave I was very tired, and reached into the closet where I kept my bottle of witch hazel; and we also had in that closet a bottle of corrosive sublimate which we used against the ants there, and it had been moved where I kept the witch hazel. I thought I had the witch hazel, where I kept it, and rubbed it on

my face. I stopped in at three hospitals on the way coming up, and my husband kept saying: "I hope you are so disfigured you can't go out on the street. I hope you are so disfigured no one will look at you". So I started going to the doctor when I came up here, and he brought me around.

Q. What effect did it have on you? A. My face was red and like a lot of callus stuff raining down. He said it had eaten into my face.

Q. After that, and while you were at Goshen you may tell the court what he did to you. A. Well, my husband was by that time like a man—I don't know—he kept saying: "I don't want you. You are interfering with my whole life. Get on out". Especially on the day we were married thirty-four years. That was a day of horror. I was sewing in the other room. We had two bedrooms but he slept on a cot in the living room. I am sitting in the dining room sewing and he came in with a gun in his hand that he kept under his pillow, and he said: "I don't seem to be able to make you understand I don't want you". And he hit me in the mouth with this gun, and cut my mouth, and broke some of my front teeth.

Q. About what date was that? A. That was a little later than my wedding anniversary, but the day of the anniversary he fought with me all day.

Q. What occurred after this gun incident? A. Well I also think Mr. Armstrong made two attempts on my life at Goshen. The second time I definitely saw he was attempting to kill me.

Q. What did he do? A. We had electric light, but we were living in a little tenant house. He had sold the house on the other part of the farm.

Q. I asked you what he did. A. He came after I had done my dishes I put my pan in a place where the steps went down to the cellar. They were old and shaky, and he came running in and pushed me, and tried to push me down the steps, but I clung to the wall. He said: "Let me down", and tried to push me but I clung to the wall. Three nights later he done the same thing.

Q. Coming down to the day that you left him at Goshen what occurred that day or the preceding day? A. Well, on a Friday he had gone into town and came back and had a lot of papers, these contracts he had, and said: "Sign these". I said: "Yes, whenever we have a sale I will sign them". He said: "I will see if they will take them with just mine"—

Q. I want to know what he did. A. Well, he beat me badly; very badly. This was on a Friday. So, on Sunday the neighbors—

Q. You say he beat you? A. Yes, sir.

Q. What did he do to you? A. He always punched me in the head and kicked me, and pulled my hair. He was always pulling my hair.

Q. And you say this was on a Friday? A. Yes, sir.

Q. What occurred on Saturday? A. Well, Saturday we went into town some place, I don't know where, and this was on Friday that he went with these papers over to these people.

Q. I direct your attention to the day you left out there. Did he go to a sale some place? A. You are speaking of Goshen now?

Q. Yes. A. I was speaking about Florida.

Q. I want to know what happened at Goshen when you left. First let me clear up something. This hitting you

with the gun, where did that happen? A. That was in 1948 at Goshen. I thought you meant when I left permanently in 1950. At Goshen I was going to have the four rooms papered, and my bedroom was upstairs, and all my nice dishes were up there, and he was up in my bedroom, and I went up to get a large meat platter I was going to use, and he jumped on my bed and he said: "Why don't you take your little box and go?" So when he came downstairs I said: "Do you really mean you don't want me, don't want to live with me?", and he said: "No, I don't. I have been trying to beat it into your head a long time. You had better not be here when I get back".

Q. What did you do? A. I put some clothing in a suitcase and started to walk. At that time I couldn't drive a car, and I started to walk over where maybe I would find some neighbor going down to Milford, and I could ride with him, and get a bus and going over to stay with my sisters. I had little or no money.

Q. Then I believe you met your sisters and came to Cincinnati with them? A. Yes.

Q. What if anything had Mr. Armstrong said to you about the property the two of you had, when he was telling you to get out? A. He said: "You get out", and he said, "And the stocks and everything else we have I am going to keep and you are not going to get anything. You are not going to get a thing. I have kept you for thirty-four years".

Q. When you left him that Saturday, then what did you do? A. I came in and went to see my—

Mr. Sammels: What year was this?

Mr. Sildbald: 1948.

Q. Go ahead Mrs. Armstrong. What did you do? A. I came to see you.

Q. After you saw me, Mrs. Armstrong, I will ask you if you did go to the various banks listed here in the pleading, and remove portions of the funds? A. Yes, sir, I did.

Q. Then did you go back to Miami after that? A. Yes, sir, I went back to Miami.

Q. And what did you get there? A. In Miami I got some papers that were in the box, and some stock that was in the bank.

Q. The stocks that are listed in the petition? A. Yes, sir.

Q. Did you bring those stocks back to Cincinnati? A. Yes, sir.

Q. Have you had them here at all times since then? A. Yes, sir, they have been here every day since.

Q. Now along in the month of August or September, of 1948, I will ask you if the two of you went back together? A. I wanted to make up with him, so I returned to Florida.

Q. About what time was that? A. That was I think in September or October of 1948.

Q. And how long did you remain in Florida? A. We stayed there a very short time.

Q. About how long? A. Well, I will say approximately a week would cover it.

Q. Then where did you go after that? A. We came back to Cincinnati.

Q. Now while you were on your way north was anything said about these stocks or securities? A. Well, one night I am sleeping in my bed, and he calls—

Q. Where was this? A. At Asheville. And he comes over and wakens me, and has a gun in his hand and says: "I am going to blow your head off. That is the only solu-

tion". He got those spells often. And I stayed calm and said: "That's not the way for us to do". Well, he sat there awhile; and I said: "I can't take any more of this. We are both getting too old". I said: "I will get a bus or a train and go to Cincinnati". Well, he went to his suitcase and got a paper and pencil and then he said: "We will try to work it out this way"; and he told me what to write, and I wrote it and he signed it.

Q. Have you the original here? A. Yes, sir.

Q. Will you let us have it? A. Yes, sir.

Q. This paper marked now for identification "A", what part is in your handwriting? A. Mr. Armstrong wrote this—

Q. You are pointing to the last four lines on the second page? A. Yes, sir.

Q. Then is the balance in your handwriting? A. Yes, sir.

Q. When you wrote that, was it your own makeup, or what was it? A. Mr. Armstrong told me about what to put in there. He said: "Of course—" you see there had been the question of him and a woman and he wanted me to put in that he was going to do different.

Q. Now after you wrote what he dictated, or told you, then what did he do? A. He signed the paper and handed it to me, and said: "Keep this, and any time I get one of these mean spells yo can take it out and read it".

Q. I see the name "Raymond C. Armstrong" and below two lines. Did he write that at the time? A. He wrote everything that is not in—yes, sir, he wrote this.

Q. "I make the above"—that is in his handwriting? A. Yes, sir.

Mr. Sibbald: May it please the court, we would like to offer this paper in evidence, and ask leave to substitute a copy.

The Court: That may be done. The paper will be admitted as Exhibit 1, and a copy may be substituted in the place of the original.

Said paper written at Asheville, North Carolina, having been admitted in evidence by the court, was marked Exhibit 1, with leave given to substitute a copy, which copy is hereto attached and made a part hereof.

Q. Then did you continue on to Cincinnati? A. We continued on to Cincinnati and went to Goshen.

Q. I will ask you, Mrs. Armstrong, after you came to Cincinnati at that time, whether the two of you consulted any lawyer when you reached Cincinnati? A. We came to Cincinnati, and Mr. Armstrong always wanting everything turned over to him. He was also—

Q. My question was, did you consult a lawyer? A. We came to Cincinnati one day. He wanted to talk to lawyers and see what they would tell me, and we want to—

Q. Elliott? A. No, a different name, I can't think, but in the Mercantile Library Building.

Q. After you went to the lawyer's office what occurred on your way home to Goshen? A. Well, Mr. Armstrong left me in town, and he was very angry. The lawyers—he went out and had an appointment and he didn't come back, and I went to my sister's and called up in the country. He had gone back to Goshen, and I called a neighbor and talked to my husband and said: "Will your come in and get me?"

Q. I am asking what occurred between you and your husband on your way home. A. I got in the automobile

with my husband and we went up East End avenue I guess—

Q. Eastern avenue? A. Yes.

Q. What occurred? A. My husband—I always locked the door on my side at night, and I pressed the button and locked it, and we are riding along and my husband reaches over and opens the button and opens the door and is going real fast, and tried to push me out of the car. It isn't much populated there, and I was screaming at the top of my voice, and he was trying to throw me out, and I was trying to cling to the car; and when we came where the houses were he quit. He tried to push me out, and I clung inside of the car.

Q. You then returned to Goshen? A. Yes, sir.

Q. And how long did you remain in Hamilton county on that trip? A. We stayed in Hamilton county I will say approximately until around the twelfth of December. Around there.

Q. Then where did you go? A. We returned back down to Miami.

Q. Did you come to Cincinnati at any other time in the next year or so? A. Well, we came up in the summer and went back again.

Q. Well, I will ask you if you came to Hamilton county in the summer of 1950? A. We came—yes, we came in I think August 1950, Mr. Armstrong and I came up.

Q. And where did you stop? A. We stayed at the Mariemont Inn.

Q. How long did he remain at the Mariemont Inn? A. I think three days will cover it.

Q. I will ask you what occurred while you were at the Mariemont Inn? I am talking about at the time you were

driving into town over Columbia parkway. A. We were coming in over Columbia parkway and suddenly he said to me: "I am going home tomorrow." Well, we had quite a lot of things to do here, and he said: "I am going home"; and he said: "I want to go alone". I said: "I thought maybe you and I could work out this thing some way", and he turned the car around and drove up in the country outside of Milford. I had all my summer things, and had two bags in the room, and he drove up outside of Milford and opened the back seat and took the wash dresses and threw them on top of me, and slammed the door on me, and came back to the Mariemont Inn with me. We walked into the lobby and he said: "I am checking out now. I won't be responsible for anyone else's money here". So I am standing there with all the clothes in my arms and had no way to get out, and I said: "Can I stay a little longer?"

Q. What about your bags? A. He went up to the room and put his clothing in my bags and left.

Q. When he left did you have any means of packing your clothing for leaving there? A. No, sir. He took my bags.

Q. When did you next see him? A. I saw him the next morning.

Q. And who was present when you saw him? A. Two of my sisters. I called Mrs. Edward Clancey to come with some bags, so I could leave, and my other sister came with her.

Q. And where did you see Mr. Armstrong? A. He called and said he was coming up, and I went outside to meet him, because I knew he was mad, and I saw him coming with my two sisters.

Q. You went with one of your sisters to her home? A. I went home with Mrs. Clancey.

Q. Do you know what became of Mr. Armstrong? A. The next I heard he was in Florida.

Q. When did you return to Florida after that? A. Well, I was still hoping we could get along, and I went within two weeks after he went back, approximately two weeks.

Q. And what occurred when you got there? A. I went to a hotel and was very, very nervous and unstrung, but I wanted to talk to him, and I met him and he was very abusive and threatened me with arrest, and all that, and I quieted him down; and the next day there was a small hurricane, and the next day he was to come to the hotel and he called and said would I take a taxi and go home, which I did.

Q. How long did you remain at the residence in Florida after you returned that day? A. Well, that day he treated me very badly, and I left that night: I was in the Greyhound Bus Station to come away after his physical abuse, and he came and said we would take a trip to the West Indies and see if we could work this deal out.

Q. He came in where? A. He came to the Greyhound Bus Station in Miami.

Q. When you and Mr. Armstrong returned from the Caribbean trip you may state whether or not you remained for a time in Miami. A. I remained in Miami for approximately a month.

Q. During that time what was Mr. Armstrong's behavior to you? A. He treated me very badly, physically and mentally.

Q. What did he do that you refer to as mental? A. Well, he told me he intended to put me in a mental institution where he could keep me.

Q. What else? A. Also, that I was never to get anything he had; that he had a will made and would see I never got a penny of anything.

Q. What did he do that you refer to as physical? A. He beat me, and every time he passed me at the table he would punch me in the head every time he would pass me at the table.

Q. I will ask you if aside from punching you he made other threats against you. A. Yes, he made threats against me all the time. He was always telling me he was going to kill me, and came into the bedroom, and I would wake with him sitting there and screaming that he would see if his attorney would have me arrested, or get papers to put me away so he wouldn't be bothered with me any more.

Q. During that interval of time, did he at any time have a gun in his possession? A. My husband always had quite a few guns; always slept with one under his pillow.

Q. Did he make any threats against you relating to the use of a gun? A. Several times he put it to my head and was going to blow my brains out. He said that was the best solution to his problem.

Q. What day of the week was it you left there? A. I left there on a Sunday night.

Q. And what month was it? A. October.

Q. Now on the day preceding your leaving what occurred? A. Well, on Friday he had gone to town and came home and had some papers, and the next morning he wanted me to sign them—a lot of contracts. I said: "When we have a sale for the lot I will sign the contract". He

said: "I will see if they won't take them with my signature alone".

Q. What if anything did he do to you? A. He punched me and beat me so badly I couldn't stay with him any longer. I thought he would eventually kill me.

Q. Did you make any statement as to your intention? A. I told him I couldn't take any more, and I couldn't live with him any longer.

Q. What occurred the next day? Where did you go? A. The next day some friends of ours across the water invited us out on a boat ride; so we went, and after we came home Mr. Armstrong resumed the quarreling with me that he had been doing, and came through the room and had a pair of slippers on that had a heavy heel, and he seemed to go mad, and he took the slipper off and beat me across the head and face and fingers and back, and kicked me in the shoulder and it was sore for months after. I lost the nails off my fingers and—

Q. That was on Saturday? A. Yes, sir.

Q. How soon after he did that was it that you left the house? A. I had to leave that night. I left that night.

Q. And came to Cincinnati? A. I came up, and my sister Mrs. Clancey met me at the airport and brought me to her house.

Q. I will ask you if, as a result of what you say Mr. Armstrong did to you, whether you bore any evidences of that on your body when you came to Cincinnati? A. Yes, sir, I did.

Q. Will you tell the court where? A. Well, I just had a few summer dresses, and it was October and besides being cold my fingers were badly damaged.

Q. How were they damaged? A. Well, he had beat me on my hand when I put it up to protect my face, and this slipper, the heel of this slipper damaged my two fingers and they turned dark, the nails, and I lost them, and I tried to turn away and he kept beating me with the heel of the shoe, and kicking me in the shin and in my shoulder and said he was going to finish me.

Q. I will ask you if when you came to Cincinnati, you showed those marks to your sisters? A. Why yes. Anyone could see my face and my head. My sister I think saw my back when I went in the bathroom. I am sure she did.

Q. Now Mrs. Armstrong, how soon after that did you rent an apartment here in Cincinnati? A. I still hoped for a reconciliation, and stayed with my sister until the tenth of November, to see if he would contact me. I didn't want to leave my husband. I don't like that.

Q. Then what did you do about the tenth of November? A. Rented an apartment at 815 Hermosa.

Q. You lived there at all times did you? A. Yes, sir, I still live there.

Q. You may state whether or not you intend to continue living in Cincinnati? A. I intend to make Cincinnati my permanent home.

Q. What occurred around the tenth of November that caused you to take that step? A. One of my sisters went to the Karp auction, and one of the ladies handed her a comb I had lost, and it had gone to Goshen. He left it at Karp auction for her to give to me.

Q. In addition, had he sent you any of your possessions. A. He brought a box of clothing, and had the Powell Moving Company's men deliver it to me at my sister's home, and Mr. Armstrong was there at the time.

Q. You know that from what you were told? A. Yes, sir; but the box of clothes I have.

Q. Now Mrs. Armstrong, in the years you were married to him, did Mr. Armstrong purchase any clothing for you? A. Very little.

Q. How were you clothed? A. Well, my sisters—we were about the same size, and they went out quite a bit and didn't wear their clothing too long, and saved it and I would take it home with me. Some summer house dresses I would buy, a few of those.

Q. Over what period of time would you say you wore your sisters' clothing? A. Well, almost from the time I was married.

Q. Well, while the two of you were living together either here in Hamilton county or in Miami, was there ever a time when you had any household help? A. Twenty-five dollars would cover all the household help I had in 36 years I was married to Mr. Armstrong.

Q. While you lived with him either in Hamilton county or in Miami, did you at any time have a telephone? A. One time my sister Mrs. Tom Jackson and my brother-in-law took a house and they wanted one, and we occupied it about two months; but never in a home we had at any time did I have a telephone until I moved to 815 Hermosa. Never had one.

Q. Besides you and Mr. Armstrong, was there any other person or thing that constituted a part of your household during that time? A. Well, visitors would come occasionally, and we had a monkey that my husband had.

Q. My question was directed to the monkey. How long had he had the monkey? A. Well, I think he had it about nineteen years.

Q. And was that a male or female monkey? A. It was a female.

Q. You may state whether or not you at any time requested him to get rid of that monkey? A. The monkey had bitten me so badly on numerous occasions I required the doctor, and asked him to get rid of her. She was vicious and bit children. He said: "You can go, but she will stay".

Q. And in 1948 when you separated where was the monkey? A. My husband had her running on a steel chain out in the yard. It was a menace to anyone that came in.

Q. At Goshen? A. Yes, sir.

Q. When you left him in June or early July of 1948, what became of the monkey? A. Mr. Armstrong took her to a veterinarian doctor and had her put to sleep right after I left.

Q. You have referred to the monkey biting you. How did you take it back and forth to Florida? A. My husband had a special cage that fit on the back seat, and she could reach her arms out for food or anything else she wanted.

Q. State whether or not he required you, on any of those trips, to occupy the back seat with the monkey next to you. A. Yes. He had me sit on the back seat with the monkey on most of the trips up; and once when someone else was in the car he said for me to stay on the back seat with her because she gets lonesome.

Q. State whether or not, at any time that you occupied the back seat with the monkey that she attacked you. A. Yes, sir. We were living in Miami, and we had had burglars in the house, and I went to give an account to the police, and he drove down with the monkey and went into the court house to see about taxes or something, and a

lady came and asked about a direction, and the monkey reached out and grabbed me and tore my sleeve to ribbons, and scratched my arm so bad the blood flowed from it.

Q. What was his statement to you when he saw it? A. Well, he used a great deal of profanity, and said: "Why didn't you keep away from her?" I was crowded into the end of the seat as far as I could get, but she put this long arm out as I went to tell the lady the direction.

Q. Now Mrs. Armstrong, one question I neglected to ask you this morning. You referred to the injuries to your face and teeth in the summer of 1948. To whom did you go, if anyone, for treatment? A. I had to go to Doctor Holton to have the roots that were left taken out.

Q. Before you went to him where did you go? A. Doctor Pollak; and he sent me to have the roots taken out.

Q. And after that did you have a plate? A. I had before that a partial plate that was attached to my teeth in front, but when my husband caused that injury I had to have the full plate because the teeth weren't there for the plate to be attached to after the dentist took them out.

Q. Who made the plate, Mrs. Armstrong? A. Doctor Pollak.

Q. Now Mrs. Armstrong, you have lived on Hermosa avenue since the latter part of 1950? A. Since November 10, 1950, yes, sir.

Q. And on what have you lived? A. I have taken money to live on from the money that we had in the banks which I drew out.

Q. Now of the money which you drew out, and the bonds, how much have you left? A. I have—well, roughly, around fifty-five or fifty-six hundred dollars.

Mr. Sibbald: You may cross-examine.

Cross Examination

By Mr. Schwartz:

Q. Mrs. Armstrong, you stated that in 1914 was the time when you loaned Mr. Armstrong some money? A. Well, it is so long ago, but between 1914 and '15.

Q. When did he go into business for himself? A. I am sorry, but it is so long ago I am not definite as to the time, but the time he went we started in on the money he got from me.

Q. Isn't it a fact, Mrs. Armstrong, that he went into business at the end of 1911 or 1912? A. No, sir.

Q. Are you sure of that, Mrs. Armstrong? A. I am positive he did not go into business on Stabler street at that time.

Q. And you are sure you loaned him the money in 1914 when he went into business? A. Whenever he went into business it was with the money I loaned him. It is long ago, and my memory is not that good.

Q. Well, you stated in your deposition it was in 1914. A. I think I said approximately, or about.

Q. Now I will ask you if this question was not asked—this is a deposition taken in Mr. Samuels' office on October 18, 1951. "When did you start in business on Stabler street?", Answer: "Well, I will say approximately, Mr. Samuels, it was 1914". A. Well, 1914 or '15. I said approximately because I am hazy as to the exact time. I never gave a definite answer.

Q. How old are you Mrs. Armstrong? A. I am 61 years old.

Q. Then in 1914—what year were you born? A. Well, I don't know exactly—offhand I couldn't give it to you, but January 5 I was sixty-one.

Q. That makes January 5, 1892. I am trying to get your age. Around 1914 you were approximately twenty-two years old? A. Well, I would say about twenty-two. It was about that time we started in business.

Q. Where were you working in 1914? A. I wasn't working any place in 1914.

Q. Did you have a job at that time? A. I was the oldest of nine children, and I helped my mother. My father worked on the railroad. We had our own home.

Q. Did you work at Fleischman's Distilling Company? A. For a short time I did.

Q. Did you have any job besides that one? A. I worked at the McGregor Distillery, in which a relative was one of the owners.

Q. When was it you worked there? A. Well, quite a bit before that, the year Mr. Armstrong was a chorus man on the stage.

Q. When was that? A. Well, this is an offhand guess, but I will say 1907-or-8, around in there.

Q. And then between 1914 and 1917 you didn't work at all? A. I worked with Mr. Armstrong. We owned the place on Stabler street from the time it was opened until we moved to the Bulldog.

Q. You say "we" owned this and that, and "we" did this and that. Was the business in both names on Stabler street? A. It never would have occurred to me to even think of that at all.

Q. I am asking whose name was the business in? A. The business was in Mr. Armstrong's name.

Q. In fact Mrs. Armstrong, the business on Stabler street was in Mr. Armstrong's name, and the business on Clark

street was in Mr. Armstrong's name; is that right? A. We were partners, and going to be married.

Q. I am just asking. The business on Clark street was in his name too, wasn't it? A. Yes, sir; everything was in his name as far as I was concerned. I didn't care.

Q. And you married him in 1917? A. On June 18, 1917, yes, sir.

Q. And you told the court that between 1914 and 1917 the business belonged to both of you? A. Yes, sir. We worked together every day.

Q. And he took you in as a partner in 1914? A. I put the money in that started us in business, and we were partners.

Q. There was nothing in writing about that? A. With the man I was going to marry I didn't think I needed it.

Q. I am just asking questions calling for a yes or no answer. There was nothing in writing was there? A. It was the man I was going to marry.

The Court: Just answer the question he asked you.

A. No, sir, there wasn't anything in writing.

Q. And three years before you were married you stated that this business was a partnership? A. It was a partnership from Stabler street on through Clark street and all through our life together.

Q. What hours did you put in when you worked on Stabler street? A. From about nine to six, and sometimes later if wheels had to be delivered for the undertakers, which happened quite often. Sometimes they had to be delivered over the river and we worked later.

Q. Now when you were married in 1917 you went to live on Clark street at the same time? A. Yes, sir, in the apartment above our business.

Q. And where were you married? A. We were married at the court house.

Q. And then you stated that as far as the business was concerned on Clark street it was in Mr. Armstrong's name, but that you considered yourself a partner? A. No, sir. We both considered me a partner, Mr. Armstrong as well as myself. I helped him, and he consulted me on every thing that we done. Everything that we bought he consulted me on, and we talked it over.

Q. When was he operated on for his hernia? A. Well, I am a little vague on that. I will say around 1918 or 1919.

Q. But he was operated on? A. Yes, sir. He had a double hernia, very bad.

Q. And the lease taken on the building across the street from the business was taken in Mr. Armstrong's name was it not? A. To the best of my knowledge we had no written agreement with Doctor Kolb. Just his word.

Q. Just an oral agreement. Now you mentioned real estate which was in both the name of you and your husband? A. Yes, sir.

Q. The real estate that is in both your names is now in process of a partition suit in this court isn't it? A. I understand some has already been divided.

Q. A judgment has been entered already in the matter of the real estate that is in both your names? A. What is here in Ohio. I think there is still more. I am not certain.

Q. Now the real estate that is on Clark street was in whose name—the legal title? A. The real estate was in Mr. Armstrong's name. That was a long time ago and my husband—

Q. Now Mrs. Armstrong, you have mentioned about Mr. Armstrong threatening you with a gun. You also used a gun, did you not? A. I am frightened to death of guns.

Q. Did you ever take a shot at Mr. Armstrong? A. I never took a shot at anything in my life. I am afraid of guns.

Q. I hand you this document marked for identification "B", and ask you if you recall that object in your old home, the one that was in your name, and was sold in 1937. You owned that home? A. I don't know what this is.

Q. That doesn't refresh your recollection at all? A. No, sir. That looks like it might be a bench that we had in the living room that we bought secondhand at the Karp Auction Company.

Q. Did you leave it there when you moved? A. No, sir, we took it from there.

Q. And you don't recall in 1937 taking a shot at Mr. Armstrong and that this picture is the place where the bullet hole is on that bench? A. Never in my life have I taken a shot at anything, let alone anybody.

Q. Now Mrs. Armstrong, you stated that in 1948 you were on your way up to Asheville and went to the hotel and that your husband in the night time pulled out a gun and threatened to blow your head off; is that right? A. He done it many times. He done it that night.

Q. I am just asking you about Asheville. A. Yes, sir.

Q. And then he signed this paper, this Exhibit 1; is that right? A. Yes, sir, he did.

Q. And the wording used in that document, which is in your own handwriting, will you tell the court whether or not those are the words he dictated? A. My husband told me what he wanted in the paper.

Q. Yes or no, are those the words your husband dictated? A. Most of them are his words. He wanted me to understand that he—

Q. Then you stated that on your way to Goshen in 1948 while he was driving, he leaned over while driving and opened the door of the car and wanted to push you out? A. After I became reconciled with him and came back here in 1948 I think it must have been in October, he left me in town—got angry and left me in town—

Q. I just asked a simple question, Mrs. Armstrong. Did you say that when he was driving the car he leaned over and opened the door and tried to push you out? A. He tried to throw me out.

Q. And he threw you, or tried to— A. He would have only I am heavy and clung to the side of the car, and his strength wasn't sufficient.

Q. But even so you went on to Goshen with him? A. I did.

Q. And you stayed with him how long? A. Well, let's see. We went back and stayed there that winter. I wanted to get along with him so badly.

Q. Even though he wanted to throw you out of the car? A. Even that, yes.

Q. How fast was the automobile going at that time? A. Well, I couldn't drive at that time, and I really could not—but very fast. He was going very fast, but the speed I couldn't give you. I knew nothing about driving the car then.

Q. Then you described a scene that occurred on your wedding anniversay? A. At Goshen, yes, sir.

Q. Which one was that? A. Our thirty-fourth.

Q. Was that before the last separation? A. The last separation was in October 1950. Yes; sir, it was before the last separation.

Q. Are you sure that is the thirty-fourth anniversary you are talking about? A. It was the thirty-fourth—thirty-third maybe.

Q. You say in 1946-and-7 Mr. Armstrong began to change. Up to 1946 had your life been a happy one? A. Well, no, sir; but I loved my husband and adjusted my ways to suit him, and tried to get along with him and let him have his own way always.

Q. All those things you described about him hitting you and being abusive to you, were those characteristic of him before 1946? A. To a great extent, but the physical abuse got worse.

Q. But you say he had abused you before that? A. Yes, sir.

Q. Why did you pick out 1946 and say the change began? A. It had gotten so much worse, and he kept insisting to me he wanted me to get out of the house, and several times he locked the doors on me, and he was in there, and I would call and he would not let me in.

Q. You also stated that in 1948 I believe it was, he tried to throw you down the steps at Goshen? A. On two occasions.

Q. How long did you live with him after he tried to throw you down the steps? A. Well, I don't think I lived with him after that but a short time—I will say a couple of days, because I think that was after he hit me with the gun. We would have gone back together when he done that.

Q. And you said the last time you were together in Miami he gave you such a severe beating, and you had marks all over your body and he threatened your life, and threatened to put you into a mental institution, and yet you tell the court that on November 10, 1950 you hoped for a reconciliation with a man like that? A. I can't help my nature, Mr. Schwartz.

Q. And after this incident about the monkey biting you, you still wanted, on November 10, 1950, to be reconciled? A. Can one help when one loves? I can't help it.

Q. Now Mr. Armstrong, with all this abuse that was going on, put some property in your name, did he not? A. Oh, I have—what property are you referring to?

Q. Let's start with when you came back from the Isle of Pines and—this picture marked for identification "C", is that a photograph of the home on the Isle of Pines? A. That was our home place. We owned others, but that was the home place.

Q. And after you came from the Isle of Pines you say this house was put in your name by your husband? A. We started—not that house, no, sir, I didn't say that. I never said that house.

Q. Wasn't Isle of Pines traded for some other property? A. We traded several pieces for property in different parts of the country.

Q. What was the first piece that was put in your name? A. Well, I think if I am not mistaken, and I might be because I never paid much attention to that, but I think it must have been the house on Thirty-first and Red road.

Q. The Thirty-first street place was your home, was it not? A. Yes, sir, that is where we lived after coming from the Isle of Pines.

Q. Whose name was the Isle of Pines in? A. That I can't be certain of; I can't tell you.

Q. But you know when the Isle of Pines was traded it was the house on Thirty-first street, and the other house—Thirty-first was in Miami, and the other house was in Coral Gables and was put in your name? A. The house on Thirty-first street, we traded some land and gave the lady some money for that house.

Q. I am asking, the house on Thirty-first street and the house in Coral Gables were in your name? A. To the best of my knowledge.

Q. And the bank account at the Cincinnati Bank & Trust Company was originally in your husband's name was it not? A. It had been always in my husband's name.

Q. And yet he put that account in your joint names in 1945? A. He came in one day and told me he had done so. We never had a quarrel over money until 1948.

Q. But in 1945 he took the bank account and put it in your name and his? A. He told me he did, yes, sir.

Q. Do you know why he did that? A. Not exactly. I couldn't really tell you what his reasons were for many things he done, and that is one of them.

Q. Didn't you testify in your deposition that it was because of his ill health? A. Well, afterwards he mentioned and said: "My health isn't good, and I would want you to be able to get some money."

Q. Then you do know why he did it? A. Not before. He never said he was going to, if that is what you mean.

Q. The other bank accounts, at Loveland and at Miami Mr. Armstrong put all those in both names did he not? A. Yes, he did.

Q. And Mrs. Armstrong, he even put the safety deposit box in both names, did he not? A. We had safety deposit boxes in both our names, yes, sir.

Q. And those safety boxes contained these shares of stock which are involved in these proceedings? A. We always kept them in safety-deposit boxes, yes, sir.

Q. I say these shares of stock were in those boxes? A. In Miami, Florida, and sometimes up here. We brought them up and down.

Q. Now you stated that at Goshen when you separated, Mr. Armstrong told you the stocks he was going to keep; is that right? A. No, sir. He said: "I am going to keep the stocks and everything else that we have. I kept you for thirty-four years".

Q. He said that at Goshen? A. He said it at Goshen and several times at Miami.

Q. How long did you separate after he said that to you? A. Oh, a good while after he said that. He said it so much in Miami I never gave it a thought.

Q. And yet, those stocks he was going to keep he had in a box which was in both names, and you could have gotten to it as well as he? A. Why certainly, yes, sir.

Q. In that box was also jewelry and currency? A. My jewelry I carried to Florida and up here. I used it in Cincinnati and Miami.

Q. And there was currency in the box? A. Yes, sir, there was money in the box.

Q. And Government bonds? A. Some Government bonds, yes, sir.

Q. How much currency was in the box, do you remember? A. My husband had a slip of paper showing $3,420. He always carried the slip showing the amount.

Q. Was there any currency in the Cincinnati box? A. That is where it was. There was none in Miami.

Q. How many bonds were there Mrs. Armstrong, if you remember? A. Well, at maturity I think it would mature at around five thousand—a little more than five thousand.

Q. Up until when did you wear clothing furnished you by your sisters, Mrs. Armstrong? A. I wore clothing furnished me by my sisters until I moved to 815 Hermosa avenue.

Q. Now before you moved to 815 Hermosa avenue, in 1948 you took from the banks and safety deposit boxes how much money? A. What I took from the safety deposit was $3,420.

Q. And from the banks how much? A. You wish me to give the amounts?

Q. Yes. A. The Cincinnati bank, $10,800.

Q. And you had $3,420? A. Yes.

Q. And you got that in 1948; is that right? A. Yes, sir.

Q. And you have not returned it to your husband? A. No, sir.

Q. And yet your clothing you have been wearing was from your sisters until you moved to Hermosa avenue at the end of 1950? A. That's right, yes, sir.

Q. You testified here before that you have on hand here in Cincinnati fifty-five-or-six hundred dollars? A. Approximately that amount, yes, sir.

Q. And on October 18, 1951, you testified you had on hand $7,500? A. I had to sell my Liberty bonds. There was an injunction put on the money in July I think it was, and I could not touch any of it, and had to sell my Liberty bonds to live.

Q. But this $7,500 you testified in October 1951 was the cash you received in 1948; is that right? A. I should tell you this: A thousand dollars of that was a thousand of insurance money and it was an endowment policy I had gotten a few months before.

Q. The question asked specifically in the 1954 deposition as to what was the balance of the $10,800, and you said $7,500? A. I understood him to ask how much money I had, and I told him.

Q. Are these the questions and answers? "You heard what Mr. Sibbald stipulated in the records with reference to this $10,800. How much of that do you have in the safety deposit box at this time?" Answer: "I have $7,500." A. That is exactly right; a thousand of that was my insurance money.

Q. Then in October 1951 how much did you have left of the $10,800? A. I had all that money together. That was part of—all the money was put together. I can give you the figures if you would like to have the amounts.

Q. I am asking how much you had in 1951 from the $10,800. A. I had left, from all the money that we had, all the money that we had and a thousand dollars that belonged to me from my insurance, I had $7,500.

Q. And today you state you have cash on hand of fifty-five-or-six hundred? A. Well, around that. It will run a little less perhaps. I must pay my rent this month, and that will have to come out and bring it down some.

Q. Now besides the $10,800 which you withdrew from the Cincinnati Bank July 2, 1948, you also withdrew money from other banks did you not? A. Yes, sir, I did.

Q. The First National in Miami how much in 1948? A. $500.

Q. And how much did you withdraw from the Cincinnati Bank & Trust Company—the Loveland National Bank, on July 9, 1948? A. That was $700.

Q. And was there any other—a savings account at the Cincinnati Bank & Trust Company which you withdrew money from besides the $10,000? A. Savings account $787 and some pennies—I can't read it, it is on the end here.

Q. And on September 17, 1946 you withdrew a thousand dollars from the Cincinnati Bank & Trust Company account, savings account? A. I withdrew that money in cash, and returned the original money to the bank that I had withdrawn.

Q. Now Mrs. Armstrong, I believe that you lived in Miami, did you not, in 1950? A. Yes, sir, I lived there until October of 1950.

Q. And did you vote in Miami in 1950? A. Well, I am not certain whether I did or not. I voted there occasionally, but that I can't tell you.

Q. You were a registered voter in Miami, weren't you? A. We were both voters in Miami.

Q. Do you remember the precinct number where you were? A. No, sir, I don't remember that. Mr. Armstrong and I would go. I don't remember that.

Q. And you received the homestead exemption for the real estate as citizens? A. Yes, sir, we received the homestead exemption.

Q. That was because you were citizens of Florida? A. I wouldn't know the reason.

Q. You stated that these stocks, General Motors and other stocks were going to be transferred to both names, but were not because of the expense of transferring the stocks? A. Well, my husband wrote to the General Motors

in I think 1941, and they wrote back and told him about what it would cost, and he mentioned it to me and I said don't bother, leave it as it is.

Q. As a matter of fact, the cost of transfer would only be about thirty-five to fifty dollars, would it not? A. Makes no difference. I didn't want him to bother.

Q. When you became reconciled after, after you took the stock they were not transferred, and are still in his name today? A. Yes, sir.

Q. You and your husband, in 1948 went to the office of Mr. Ward, an attorney in Miami, for the purpose of effecting a reconciliation? A. No, sir.

Q. Weren't you in his office in 1948 in regard to a reconciliation? A. No, sir. I was in his office, but we were reconciled at home. He wanted to go to Mr. Ward's office and pay him, and he left me in the outer office and Mr. Ward did not speak to me at all.

Q. You did not see Mr. Ward? A. No, sir, definitely not. He didn't speak to me at all.

Mr. Schwartz: That is all.

Redirect Examination

By Mr. Sibbald:

Q. Mrs. Armstrong, after you and Mr. Armstrong went back together in 1948, was there any disposition made of any of this money you had withdrawn from the banks between the two of you? A. You mean, was there money taken out of this money?

Q. Yes. A. Yes, sir.

Q. Now will you detail as best you recall, just what was done with money you had withdrawn from the banks? A. I paid my attorney $1,500 and Mr. Armstrong said to me:

"I don't want to pay Mr. Conway and Lacinak that direct check. I want to give it to Mr. Howard to pay it".

Q. How much was paid to Conway & Lacinak? A. $1,500.

Q. In addition to that $3,000, what other funds did you pay out of these moneys? A. I deposited $2,000 in the Fifth-Third at Lockland.

Q. State whether or not that was a new joint account. A. Yes, sir, opened that day.

Q. $3,000 to attorneys, $2,000 to the Fifth-Third; what other money did you take out? A. Well, $2,000 to put into the First National Bank at Miami. Before we reached there he said he must have $15, and so I deposited $1,985 in the First National in Miami.

Q. What other disbursements did you make? A. Well, $400 was checked out for household expenses at Goshen while we were here, and Mr. Armstrong got a hundred and I will say odd things took another hundred. A bill to be paid in Miami, and different things and stuff we bought in Goshen. He collected ivories, and we had a bill of approximately a hundred. While I was away from Mr. Armstrong I spent $250 for things I needed, and that included my plane ticket when I went back to Miami to see if I could effect a reconciliation with Mr. Armstrong.

Q. You said something about purchases made at Karp's. How long had you been dealing there? A. Well, we had been going to Karps at times, and we also bought from Ezekiel & Bernheim.

Q. What sort of things did you buy? A. Well, I made a study of antiques. I know them very well, and bought some fine pieces.

Q. Where were they taken? A. To Miami, and placed in our home.

Q. And when you left there in 1950 were they still there? A. Everything. My Sterling silver and everything. I came with a small suitcase.

Q. Who made—did Mr. Armstrong take part in accumulating these antiques? A. He would go with me. He liked them, but I knew antiques.

Mr. Sibbald: I think that is all. Step aside, Mr. Armstrong.

(And thereupon witness left the stand.)

And thereupon the plaintiff, to further maintain the issues upon her part, called as a witness,

Joseph W. Jackson,

who, being first duly sworn, testified as follows, to wit:

Direct Examination

By Mr. Sibbald:

Q. Will you give us your name, sir? A. Joseph W. Jackson.

Q. And your address, Mr. Jackson? A. 1204 Baymiller street.

Q. How old are you, Mr. Jackson? A. I am seventy-five years old.

Q. Do you know Mary Armstrong, was Mary Donovan? A. Yes, sir.

Q. How far back does your memory go of her? A. Oh, I remember her back about 1918.

Q. And at that time, what to your knowledge was she doing? A. Well, she ran the garage, I believe, on Clark street.

Q. What occasion did you have to be dealing with the garage? A. Well, I lived and worked down there, and passed there a lot of times.

Q. Over what period of time did you see her in or about that garage? A. Oh, I guess three or four years.

Q. And how often would you say you saw her there? A. Oh, nearly once or twice a day sometimes.

Q. And what would you see her doing? A. Working around the office; and I have seen her selling goods; and I have seen her working with the baby buggies, putting tires on baby buggies.

Mr. Sibbald: That is all.

Cross Examination

By Mr. Samuels:

Q. You also knew Mr. Armstrong, didn't you? A. No, I didn't. I knew him by sight is all.

Q. Did you know Mrs. Armstrong personally? A. No.

Q. What did you see Mr. Armstrong doing? A. I seen him around in the office. Once in a while I would see him out at the pumps, the one pump they had there.

Q. The only persons there were Mr. and Mrs. Armstrong? A. That is all I know.

Q. Nobody else was around there? A. I just passed there, and that is all I could see.

Q. Where were you working at the time? A. I worked at Carr and Linn I believe.

Q. Mr. Sibbald asked you about Mary Armstrong as Mary Donovan; did you know her as Mary Donovan? A. No, I didn't.

Q. You are not related in any way to any of the parties here are you? A. None whatsoever.

Mr. Samuels: Nothing further.

(And thereupon witness left the stand.)

And thereupon the plaintiff, to further maintain the issues upon her part, called as a witness,

Edward Wald,

who, being first duly sworn, testified as follows, to wit:

Direct Examination

By Mr. Sibbald:

Q. Will you state your name, sir? A. Edward Wald.

Q. Where do you live, Mr. Wald? A. 1100 Woodlawn avenue, Price Hill.

Q. What position do you hold here in the court house, Mr. Wald? A. Well, I have been in the county engineer's office, going on my thirty-seventh year.

Q. Do you know Mary Armstrong? A. I know her through down on Clark street, when she moved on Clark street.

Q. And do you recall about when that was? A. Well, it was the middle of 1917, around in July.

Q. And at that time where did you live, Mr. Wald? A. I lived at Clark and Baymiller.

Q. And were you in the army in those days? A. Not then. I went in in September 1917.

Q. Between July and September I will ask you if you had any occasion to see Mary Armstrong? A. Yes, sir, I saw her quite a bit.

Q. Where would you see her, Mr. Wald? A. Well, we used to go up Clark to Linn and I used to see her in Armstrong's garage, and every time I passed—not every time I passed but most times when I passed she was there at the gasoline pump or either she was putting these little rubber wheels on baby buggies, or trailers or whatever they call them. I don't know what they call them.

Q. Now how often would you say that occurred, that you saw her working there during the period before you went into the army? A. Well, from July to September I would say, oh, two or three times a day that I would go up that way, because two of the boys I hung around with had their machines in the garage. There was a lot of room because there were not many machines.

Q. How long were you away in the service? A. About fourteen months total. I got out in December 1918.

Q. And did you return to the same locality? A. I returned to the same place, yes, sir.

Q. I will ask you if, between December 1918 and say 1924, if you had occasion during that interval to see Mary Armstrong? A. Oh, I seen her many times—many times.

Q. Where? A. I couldn't say how many times, but quite a few times.

Q. And where did you see her? A. At the bay window—not the bay window but the big window on Clark street. She was always sitting there either working at the desk keeping the books, or whatever it was, or she was outside turning the gas or anything else like fixing the little tires—I don't know what you call them.

Q. Would you say that that continued throughout the period from your return from the service until the Armstrongs gave up the garage?

Mr. Samuels: Objection to the form of the question, if the court please.

The Court: I don't think it is objectionable. He may answer.

A. I think so, yes, sir.

Mr. Sibbald: Cross examine.

Cross Examination

By Mr. Schwartz:

Q. You mentioned the bay window. A. I corrected myself.

Q. There was a bay window? A. It was a big garage window on the side, on Clark street. You couldn't help seeing her when you passed.

Q. There is a bay window on the second floor? A. I never paid much attention. I knew the people that lived around there because I was born there.

Q. You told us about Mrs. Armstrong; what about him? A. Oh, I used to say hello to Ray. He had a little gasoline buggy there and we would all go up and look at that.

Q. All the time when you saw—you only saw Mrs. Armstrong working in the place; you never saw her at any other place? A. No, I never had any occasion to.

Mr. Schwartz: That is all.

(And thereupon witness left the stand.)

And thereupon the plaintiff, to further maintain the issues upon her part, called as a witness,

Daniel J. Finley,

who, being first duly sworn, testified as follows, to wit:

Direct Examination

By Mr. Sibbald:

Q. Will you state your name, sir? A. Daniel J. Finley.

Q. Where do you reside, Mr. Finley? A. 1011 Benz avenue, Price Hill.

Q. Mr. Finley, you know the Armstrongs, do you? A. Yes, sir.

Q. How long have you known them? A. Oh—I am fifty-two, and I guess about as long as I can remember.

Q. Did you ever visit their home in Florida? A. Yes, sir.

Q. When was that? A. In 1950.

Q. Can you recall the month? A. Yes, sir. It was an unusual circumstance. If I may say this: My son was recuperating from polio, and Mrs. Armstrong was my cousin, and I asked was it all right to come down and stay a few weeks, and she very courteously said to come, and I think we left May 1, 1950.

Q. And you say you remained how long? A. Three weeks.

Q. During those three weeks, Mr. Finley, did you have any occasion to see Mr. Armstrong's conduct or behavior around the house? A. I did.

Q. Will you tell the court what you observed? A. Well, I realized after I had been there about a week or week and a half, that the atmosphere wasn't too good between Mr. and Mrs. Armstrong; but I do know that they made our trip very pleasant. However, it was only human to see things that went on, that created a lot of strife between them.

Q. Will you describe what form that took? A. Well, more or less routine conversations; sarcastic remarks; not a reasonable answer; something along that line.

Q. From whom? A. Mr. Armstrong.

Q. Was there any profanity in connection with that? A. I am afraid there was.

Q. And directed towards whom? A. Mrs. Armstrong.

Q. How long would you say that continued during your visit there? A. Well, it was more or less regular. I couldn't say how often, or anything like that.

Mr. Sibbald: That is all.

Cross-Examination

By Mr. Schwartz:

Q. What relation are you to Mrs. Armstrong? A. First cousin.

Q. Now Mr. Armstrong didn't object to your coming down there, did he? A. No, sir.

Q. Allowed you the hospitality of his home? A. Very fine to me all the time I was there; my son too.

Q. Took you to the beach, and tried to make you feel happy? A. We went to the beach every day.

Q. And all you observed was what Mr. Armstrong did, but not anything that Mrs. Armstrong did? A. Well, I couldn't see any fault in anything she done. She was very kind to us, and so was Mr. Armstrong; but that condition prevailed, and it was only human to see it.

Mr. Schwartz: That is all.

(And thereupon witness left the stand.)

And thereupon the plaintiff, to further maintain the issues upon her part, called as a witness,

Ben Nieman,

who, being first duly sworn, testified as follows:

Direct Examination

By Mr. Sibbald:

Q. What is your name? A. Ben Nieman.

Q. Where do you live? A. 817 State avenue.

Q. Mr. Nieman, you are married to one of the sisters of Mary Armstrong? A. That's right.

Q. You know the Armstrongs? A. I guess I know Ray for fifty years.

Q. I will ask you if, in the fall of 1950, you saw him at or near the vicinity of your home? A. Yes, sir, I did.

Q. What occurred at or about the time you saw him there? A. Well, it was summer time, and I was sitting in the yard, and a colored man had a big box and walked halfway back in the yard, and I said to him: "Who are you looking for?" He said: "Nieman". I said: "I'm Mr. Nieman. What's in the box?" He said: "Well, Mr. Armstrong said this is Mrs. Armstrong's belongings". So when he left I went to the gate, and Mr. Armstrong was about half a square down the street, and I noticed he was talking to this fellow, and then he got in his machine and drove away.

Q. I will ask you, Mr. Nieman, if that is the box that was left there the day you saw Mr. Armstrong get in his car and drive away? A. Yes, sir, that is the box.

Q. Well, with the contents as they are there? A. In fact I never looked what was in the box.

(At the request of counsel for plaintiff said box was thereupon marked for identification "D".)

Mr. Sibbald: That is all.

Mr. Samuels: No cross examination.

(And thereupon witness left the stand.)

And thereupon the plaintiff, to further maintain the issues upon her part, called as a witness,

Bridget Clancey (Mrs.),

who, being first duly sworn, testified as follows, to wit:

Direct Examination

By Mr. Sibbald:

Q. Will you give us your full name, Mrs. Clancey? A. Bridget Clancey.

Q. Where do you reside, Mrs. Clancey? A. 4312 Cappel drive, Price Hill.

Q. You are the wife of Edward C. Clancey? A. Yes, sir.

Q. Mrs. Clancey, what relation are you to Mary Armstrong? A. I am her youngest sister.

Q. And how much younger are you than she? A. Well, about sixteen years.

Q. Now you know Ray Armstrong, do you not? A. Very well, yes, sir.

Q. I will first call your attention to an afternoon the latter part of June or early days of July 1948, and ask you if you went out to Goshen where your sister had been living? A. Yes, I did.

Q. And who went with you, if anyone, Mrs. Clancey? A. My sister, Mrs. Kies.

Q. Mrs. Ray Kies? A. Yes, sir.

Q. How did you go? A. In my car.

Q. Did you see her that afternoon? A. Yes. As we made our turn to go up the road she was walking down, and had a large grip, and it was a very hot day. She was all red and perspiring, and we picked her up, and were very much surprised to see her on the road.

Q. What if anything did you notice about the condition her face and mouth were in? A. Well, her jaw was all swollen and mouth very sore; and we picked her up there. She was very nervous.

Q. Where did you take her? A. To my home.

Q. And did she thereafter continue to live with you for a time? A. Yes, she did.

Q. You may state whether or not she was under any treatment for the condition of her mouth. A. Yes. She had to have some teeth taken out, and I drove her down to the dentist, and her mouth was very, very sore.

Q. And what dentist was that? A. I think I dropped her off at Seventh and Vine, and it was Doctor Holton.

Q. Now Mrs. Clancey, during the time to your knowledge that Mr. and Mrs. Armstrong lived together, you may state how Mrs. Armstrong was clothed. A. Very poorly.

Q. Where did she obtain her clothes, if you know? A. From her sisters, mostly.

Q. What sisters do you mean gave her clothes? A. All of us; Mrs. Kies, Mrs. Nieman, Mrs. Jackson and myself.

Q. And over what period of time did you do that? A. As long as I can remember.

Q. Aside from what you sisters gave her, what clothing did she have, to your knowledge? A. House dresses; thin little house dresses.

Q. How about shoes, and such as that? A. Just a pair or two of shoes, two at the most.

Q. How long a time would you say—over what period of time did that extend? A. As long as I can remember.

Q. Have you ever visted the Armstrongs where they lived, in Florida? A. Yes.

Q. You may state whether, to your knowledge, Mrs. Armstrong ever had any help in her household? A. I have never seen any.

Q. Will you state whether or not, in the years you visited or knew about her, whether she had a telephone? A. I helped her when I was a child. I used to scrub and clean.

Q. While you knew her in Florida did she ever have a phone? A. Oh, no.

Q. You say you did help her when you were a child? A. When she lived on Clark street.

Q. How often would you visit her? A. Practically every Saturday my mother asked me to go and help her, and I scrubbed her kitchen and steps, and I was very young.

Q. Who do you mean you went and helped? A. My sister, Mrs. Armstrong.

Q. What work did she do upstairs? A. She did everything. That is, she worked, and cleaned the house and cooked the meals.

Q. What did she do downstairs if you know? A. She did office work, and cleaned the office and worked out in the garage. I have seen her give out gas.

Q. And over what period of time did you observe her doing that? A. As long as they were on Clark street.

Q. Do you mean you were there each Saturday? A. Well, I wouldn't say every Saturday, but quite a few Saturdays.

Q. Were you there at any other time? A. Yes, I went there a lot. I visited my sister a lot on Clark street.

Q. After the Armstrongs went back together, calling your attention particularly to the summer of 1950; I will ask you if there was any occasion when you went out to the Mariemont Inn? A. Yes, sir.

Q. Who went with you? A. Mrs. Kies.

Q. Will you tell the court what you found when you got to the Mariemont Inn? A. That morning—it must have been seven o'clock—my phone rang and I went and it was my sister, and she was very nervous and said: "Bridget, will you bring me a grip? I am here alone and I have nothing—"

Mr. Samuels: I object to the conversation over the phone in the absence of Mr. Armstrong.

The Court: That may go out.

Q. What did you take with you to the Mariemont Inn, if anything, Mrs. Clancey? A. I took my large grip.

Q. And when you got there, what did you find? A. Well, I found my sister up in the room alone.

Q. And what about her clothing and possessions there? A. Well, they were just laying there. She had nothing to put them in.

Q. What did you do with the grip? A. We packed her clothes in it, and the things she had up there.

Q. Did you on that visit to the Mariemont Inn, see Mr. Armstrong there? A. Yes, I did.

Q. Where? A. On the street.

Q. What conversation did you have with him? A. Well, he came walking up the street and I was upset too, and I said: "What is the matter with you? Why don't you try to get along?" You know, it was just this and that, and that was our conversation together. I was upset too because of what went on.

Q. And where did you go from there? A. Took my sister home.

Q. And how long did she remain with you at that time? A. Well, I think it was a few months, a couple of months.

Q. You may state whether or not she then returned to Florida. A. Yes, she did.

Q. Now, calling your attention to the latter days of October 1950, I will ask you if your sister again came to Cincinnati? A. Yes, she did.

Q. Where did you first see her? A. I picked her up at the airport.

Q. Will you describe to the court what you noticed about her physical condition when you picked her up? A. It was quite a chilly day, and she had a very thin short coat on, and she was very nervous and highstrung, and she showed

me her two fingers. They were all sore and she was very nervous.

Q. After you left the airport where did you go? A. To my home.

Q. Did she stay at your home? A. Yes, sir.

Q. State whether or not you observed any bruises on her body? A. Yes, she had a couple on her shoulder.

Q. Describe the appearance of what you saw. A. There were bruise marks on her right shoulder, two large ones.

Q. Now about these fingers, what happened there? A. Well, I don't know, but the nails were coming off and eventually she lost them.

Mr. Sibbald: Cross examine.

Mr. Samuels: No questions.

(And thereupon witness left the stand.)

And thereupon the plaintiff, to further maintain the issues upon her part, called as a witness,

Jule Kies (Mrs.),

who, being first duly sworn, testified as follows, to wit:

Direct Examination

By Mr. Sibbald:

Q. Will you give us your name, please? A. Jule Kies.

Q. Where do you reside, Mrs. Kies? A. 448 Wilke drive, Price Hill.

Q. You are the widow of Ray Kies? A. I am.

Q. Formerly the criminal court bailiff here? A. Yes, sir.

Q. What relation are you to Mary Armstrong, the plaintiff? A. Sister.

Q. What difference is there in your ages? A. Well, there is about ten years difference—let's see—about eight years difference.

Q. Now in the days when she was a young girl, did you know Ray Armstrong? A. Yes, I knew him.

Q. When did you first become acquainted with him? A. When my sister went with him I guess I was around twelve or fourteen, something like that.

Q. State whether or not you recall when the business on Stabler street was started? A. Yes, I do.

Q. Do you have any recollection of a diamond ring that Mrs. Armstrong, or Mary Donovan, had? A. Yes, she had a diamond ring, and she gave it back to him to start the business on Stabler street, and she also borrowed some money from my aunt.

Q. Did you have occasion, after the business was started, to go to the place where it was conducted? A. Yes, I went many times. My mother made sandwiches, and I often took them to her and him.

Q. Will you tell the court what you observed her doing? A. Yes. She was working, helping with clerical work; and he was out a lot and she would be taking care of buyers, and things around there.

Q. How often to your recollection were you down there at the Stabler street place of business? A. Well, I couldn't say exactly how many times, but quite often.

Q. Now after she and Ray Armstrong were married, state whether or not you visited where they went to live. A. I did a time or two, but not too much on Clark street, no.

Q. When you did go, what did you see her doing? A. She was in the office most of the time, or outside giving gas or selling things in the office. There were different objects and things they had to put on tires, and she worked there in the evening and day both. That is the only time we got to see her, was when we went over there.

Q. What do you mean by that? A. Well, she was always busy, and didn't come home much after that.

Q. After they left Clark street and went to Florida, did you visit her at any time in Florida? A. Yes; I went there one time in—I just don't remember the date. It might have been 1935 I went the first time, and the second time I went with my other sister in 1945.

Q. Will you tell the court what you know about how Mrs. Armstrong obtained the clothing that she wore during the years the two of them were married? A. She took most of it back from us. We gave her most of her clothing. She took it back with her when she came up in the summer.

Q. When you visited them and were at their home in Florida, what did you observe about whether she did or did not have household help? A. No help at all.

Q. Was there ever a telephone in the house? A. There never was a phone in there, no.

Q. Did you, in the summer of 1948, go out to Goshen where they were living? A. Yes. My sister and I went out with the intention of eating dinner, and when we got up almost to Goshen on the road she was coming down the road walking with a grip in her hand, and her face was all red, and she was crying; and I didn't know what was wrong; and she got in the car and told us he had said for her not to be there when he got back.

Q. Don't tell us the conversation, but what did you notice about her face? A. All sore on the side, and her teeth were loose where he hit her, she said.

Q. Where did you take her that day? A. Down to my sister's home.

Q. Do you know whether or not she received treatment for the condition of her face? A. Yes, I went with her to the dentist to have her teeth fixed.

Q. What dentist was that? A. Doctor Holton.

Q. Where is his office, if you know? A. I think it is on Sixth and Walnut—or Seventh and Walnut. I am not certain about the location.

Q. And when she went in, do you know what he did for her? A. He removed a tooth or two, to my recollection.

Q. Now after—some time after that do you know whether or not she returned to Florida? A. Yes, she did.

Q. I call your attention particularly next to a trip to—visit you made to the Mariemont Inn. Do you recall that? A. Yes. She called my sister and my other sister and I went out together. She told us to bring—

Q. What did you take with you? A. We took some luggage with us. She didn't have any, and we took a grip or two.

Q. And when you got there where did you find her, and what was the condition of the room? A. Well, I don't think I went up in the room. I was downstairs and Mr. Armstrong came along there.

Q. Did you have some conversation with him? A. Yes, I had quite a conversation with him.

Q. What was it? A. He had been gone all night. He told us he had been to Louisville—picked up and went to Louisville.

Q. Where did you take your sister that day? A. Home with us again.

Q. Now did you see her when she returned from Florida in October of 1950? A. No, I didn't see her right away then.

Mr. Sibbald: Cross examine.

Cross Examination

By Mr. Schwartz:

Q. Mrs. Kies, what year were you born? A. 1900.

Q. Now were you present—you do remember Mr. Armstrong and your sister going together, don't you? A. Yes.

Q. And when did they get married, do you know? A. They got married around 1917.

Q. How many years before that did this ring incident occur? A. Well, I think that was, about as near as I can remember, maybe two years, or three. I am not real sure.

Q. You were only about fourteen or fifteen then? A. That's right.

Q. Do you remember the incident about the ring, and what she was giving it to him for? A. Yes. We talked that over at our house a lot.

Q. You talked it over a lot, and that is how you remember about it, because you talked it over? A. Yes. We were six girls, and talked it over quite a bit.

Q. That is how you knew about the ring. Now Mrs. Kies, where did your sister Mary work before she got married? A. She was in the place down there on Stabler street before she got married.

Q. Where did she work before that? A. If I am right she worked at the Globe-Wernicke Company. I am not sure whether that was the last or the first place she worked.

Q. Where was she working when the ring incident occurred? A. I think at the Globe-Wernicke Company.

Q. And when did she go down to the Stabler street place to work? A. Well, as near as I can remember it was 1914 or 1915, but I am not real sure about that.

Q. Were you living at home at the time Mr. and Mrs. Armstrong were married? A. Yes, I was.

Q. In 1917? A. Yes, I was.

Mr. Schwartz: That is all.

(And thereupon witness left the stand.)

Afternoon Session, Wednesday, April 1, 1953, 2 o'clock.

Mr. Sibbald: If the court please, I wish to offer next the deposition of Raymond Kies, and read it to the court.

The Court: It may be admitted as Exhibit 2.

Said deposition of Raymond Kies having been admitted in evidence by the court, was marked Exhibit 2, is hereto attached and made part hereof.

Said deposition was thereupon read by court.

The Court: In view of the fact that Mr. Kies was an employee of the court, the court will take judicial notice that he is deceased, and will require no proof of his death.

Mr. Sibbald: I next offer an authenticated copy of the proceedings in case No. 140311 in the Circuit Court of the Eleventh Judicial District in and for Dade county, Florida, in which Raymond Armstrong was plaintiff and Mary Armstrong was defendant, consisting of the bill of complaint, the amendment to the bill of complaint, the transcript of the testimony, the special master's report, and the final decree for divorce entered by the Florida court.

Mr. Samuels: I want to object to the introduction of this folder. As Mr. Sibbald stated, it is a copy of certain papers in a certain case in the Judicial Circuit Court, the certificate of the clerk stating that the foregoing are true and correct copies; but it does not show, and I happen to know as a fact that it does not contain the entire record of the case referred to, in which Raymond Armstrong was the plaintiff and Mary Armstrong was the defendant in the Dade county, Florida, court. I call particular attention to the absence of such things as the affidavit for publication,

the publication itself, the proof of publication and other documents.

The Court: Does Mr. Sibbald have to introduce all the records? I never heard of such a thing myself.

Mr. Samuels: If a proceeding is attempted to be impeached, which I assume he is attempting to do, I should say the entire record should be introduced.

The Court: Objection overruled, and the papers may be admitted as Exhibit 3.

Mr. Samuels: Note my exception, please.

Said papers in the Florida divorce case having been admitted by the court, were marked Exhibit 3, are hereto attached and made part hereof.

Mr. Sibbald: I next offer the cross examination from the deposition of W. G. Ward, taken on January 29, 1953.

Mr. Samuels: Your Honor please, my understanding, maybe I am wrong, of a deposition is this: It is submitted to the court and the court admits it and there is a direct, cross and redirect examination, but I don't think it is proper to take a deposition and just read a part of it.

The Court: In other words, it is your contention that you have to offer it all?

Mr. Samuels: It being a deposition in the case, either it is all offered or not at all is my position.

The Court: If your position is correct you could take depositions and file them and never offer them.

Mr. Samuels: The other side can offer my deposition, but the entire thing is admissible or none of it is. I am objecting to the offering of part of it.

The Court: What do you say, Mr. Sibbald?

Mr. Sibbald: I have always understood, may it please the court, that either side can offer any part of it.

Mr. Samuels: I have no objection to the entire deposition.

The Court: You are offering part, and the burden is upon you. I am inclined to believe that you can offer all or a part of the deposition, and I will not rule until I am sure.

Let the record show, Miss Reed, that I will permit it to be offered, and if counsel cannot show me any authority for the propriety of it I will strike it out.

It may be admitted as Exhibit 4.

Said deposition of W. G. Ward having been admitted in evidence by the court, was marked Exhibit 4, is hereto attached and made part hereof.

Mr. Samuels: Note my exception, please.

Mr. Sibbald: I will read the cross examination.

Mr. Samuels: I was not present, if the court please, at the taking of the deposition, but I gather that those are confidential communications.

Mr. Sibbald: Mr. Ward was called as your witness, and this was cross examination after he had testified in this case at the behest of your client.

Mr. Samuels: He can't testify as to confidential communications. The deposition shows he was the attorney. I just note an objection? May I have a general objection?

The Court: You have an objection. The court is only admitting this temporarily.

Counsel for plaintiff thereupon finished reading the cross examination of the witness.

Mr. Sibbald: I will next offer in evidence and ask permission to read to the court the deposition of W. R. Culbreath.

Mr. Samuels: Objection.

The Court: Objection overruled. The deposition will be admitted as Exhibit 5.

Mr. Samuels: Note my exception, please.

Said deposition of W. R. Culbreath having been admitted in evidence by the court, was marked Exhibit 5, is hereto attached and made part hereof.

Mr. Sibbald: I next offer in evidence and ask permission to read the deposition of Anna B. Benz.

The Court: It will be admitted as Exhibit 6.

Said deposition of Anna B. Benz, having been admitted in evidence by the court, was marked Exhibit 6, is hereto attached and made part hereof.

And thereupon the plaintiff, to further maintain the issues upon her part, called as a witness,

Juanita Kroger (Mrs.),

who, being first duly sworn, testified as follows, to wit:

Direct Examination

By Mr. Sibbald:

Q. Will you give us your full name, please? A. Mrs. Juanita Kroger.

Q. Where do you reside, Mrs. Kroger? A. 21 Thompson avenue.

Q. What is your occupation, Mrs. Kroger? A. Secretary to Doctor Pollak.

Q. Doctor Samuel Pollak? A. That's right.

Q. And he is a dentist in the Palace Hotel Building? A. Yes, sir.

Q. How long have you worked for him? A. For ten years.

Q. And what is your position there with him? A. Secretary.

Q. And who keeps the records in the office? A. I do.

Q. Now the doctor was subpoenaed to bring in the dental card of Mary R. Armstrong. Have you brought it with you? A. Yes, I have, sir.

Q. You have it in your possession at this time? A. Yes, I do.

Q. Is that a record made in the ordinary course of business in the doctor's office? A. Yes, sir.

Q. In whose handwriting is that card? A. It is in several handwritings—whoever took care of her when she was in the office.

Q. It is not in your handwriting? A. No.

Q. Did you know Mrs. Armstrong, yourself? A. No, sir, I did not.

Q. You have no recollection then of anything that happened when she came in? A. No. Her face is familiar from seeing her, but that is all I can say.

Q. I will ask you if you have a record of Mrs. Armstrong being a patient in Doctor Pollak's office in the months of June and July 1948? A. Yes, sir.

Q. Can you tell us how often, and when during those months she was in your office?

Mr. Schwartz: Objection.

The Court: Objection sustained to the question in that form.

Q. Does the record show, Mrs. Kroger, when she was in your office during those months? A. Yes. She was in ten times.

Mr. Schwartz: I object to any further statement.

The Court: There is nothing before the court.

Mr. Sibbald: I will offer the record, if the court please.

Mr. Schwartz: Objection.

The Court: What is the objection?

Mr. Schwartz: I don't see how this is competent. Dentists keep a card, and the dentist would be the best evidence.

The Court: I do not understand that under the law it has to be a hospital record. The record will be received as Exhibit 7.

Mr. Schwartz: Note my objection and exception.

Said dental card having been admitted in evidence by the court, was marked Exhibit 7, is hereto attached and made part hereof.

Q. Mrs. Kroger, calling your attention to this Exhibit 7, at the left margin of the first page are certain dates. What do those dates indicate?

Mr. Schwartz: Objection, may it please the court.

The Court: Overruled.

Mr. Schwartz: Exception.

A. It shows the dates she was in the office.

Q. And when you say "she" you mean Mrs. Mary Armstrong? A. That's right, sir.

Q. Now I have a little difficulty reading some of this. I notice on the third line the words "Ref Holton". Can you tell us what that indicates? A. She was referred to Doctor Holton for extractions. He is a specialist.

Q. Then on the line after the date 7-9-48 the word "Holton for" and another word. A. It is "process". Where he had originally extracted her other teeth, and small pieces of teeth worked out and she was referred back for process.

Q. Now I notice on the line after 6-17-48 there are two words. Am I correct in reading those words "teeth broken"? A. That's right.

Mr. Sibbald: That is all the questions I have of this witness, but if the court please I would like to have a photo-

static copy made of this card and substitute it for the original.

The Court: That may be done.

Cross Examination

By Mr. Samuels:

Q. Mrs. Kroger, did you make any part of that record? A. No, sir.

Q. None whatsoever? A. No, sir.

Q. And when did you— A. Yes, this is mine—"Holton".

Q. Under July 9? A. I refer all patients out of the office—the majority of them, when I am present.

Q. What do you mean? A. Any patient with teeth we don't want to extract, or where there has been an injury, we don't do it. We are not specialists and don't attempt it.

Q. And they are referred to Doctor Holton? A. I tried to refer her to Doctor Weaver, if I am not mistaken. We usually refer them to Doctor Weaver or Doctor Holton. We couldn't get Doctor Weaver, so we sent her to Doctor Holton as she needed it immediately.

Q. When did her relationship with Doctor Pollak start? A. Our notes show she was to us once in 1946 when we just did repair work.

Q. When, in 1946? A. September 11.

Q. That was the first visit to your office? A. Yes.

Q. You have no other record on her? A. No, sir.

Q. What do you mean by repair work? A. It looks as though we might have replaced a tooth on a partial plate.

Q. And the balance due here, $25, what would that be for? A. She was given a price of $30 for the full lower denture she needed. That was for a denture.

Q. Do you remember her from this, or are you speaking from the record? A. Her face is familiar to me.

Q. Do you recognize this gentleman here? A. He looks familiar, but I do not know his name.

Q. Did you see him come in with her? A. That I can't tell you, that long ago.

Q. But he looks familiar, just like the lady does? A. Well, I have seen her several times, and could have him confused with another patient. We see about three hundred a day.

Q. Does he resemble someone that came to the office? A. Yes, he does.

Q. But you don't recall him coming with this lady? A. No, because I have seen her several times.

Q. You personally—you are not a dentist yourself? A. No, I am not.

Q. You know nothing about dentistry or— A. Other than working very closely with it for ten years.

Q. Only what the doctor in attendance tells you, you put in the record? A. That's right.

Q. She was referred to Doctor Holton in June, and then sent back again the latter part of July; am I correct about that? A. That's right.

Q. For further extraction work? A. No; I am going by the notation here. We sent her for extractions on this date, June 22, 1948. We made an appointment on the seventeenth, and on the twenty-second she came back very nervous, and we did not attempt to do anything, and that is why we sent her to him. Evidently her gums were— we wanted to take the impression, but there must have been something we wanted to check before we made the denture.

Q. Might have been roots left after the extraction? A. No. If there had been roots there would have been X ray taken.

Q. What is this? A. When her denture was made the anteriors were set on a slant, and we straightened them.

Q. How many did you make? A. One only.

The Court: This is all very interesting, but what has it to do with who is entitled to a divorce?

Mr. Samuels: You are right, Your Honor. I have nothing further.

(And thereupon witness left the stand.)

And thereupon the plaintiff, to further maintain the issues upon her part, called as a witness,

Frank Bardonaro,

who, being first duly sworn, testified as follows, to wit:

Direct Examination

By Mr. Sibbald:

Q. Will you state your name? A. Frank Bardonaro.

Q. Where do you reside? A. 2422 Eastern avenue.

Q. What is your occupation, Mr. Bardonaro? A. Truck driver, fruits and vegetables.

Q. Do you know Mary Armstrong? A. Yes, sir.

Q. When did you become acquainted with her? A. When I kept my truck in her garage.

Q. And where was that garage? A. On Clark street.

Q. Are you able to recall about when that was? A. It has been over thirty years ago.

Q. Do you know Raymond Armstrong? A. I know Mr. Armstrong, yes, sir.

Q. How long did you keep the truck in the garage on Clark street? A. Around six or seven years.

Q. And you may tell us how often you were in and out of the garage. A. Well, every day, and come back in the afternoon. Out in the morning and back in the afternoon.

Q. How early in the morning would you go out? A. About five; and come back about two.

Q. Now Mr. Bardonaro, can you tell us whether, as you brought your truck into that garage over that period of time, you saw Mary Armstrong around the garage. A. Always. Always in the office or over in the garage room.

Q. And would you say that that continued throughout the time you kept your truck there? A. Oh, I always seen her, and paid my garage rent to her lots of times.

Mr. Sibbald: That is all.

Cross Examination

By Mr. Schwartz:

Q. Did you know her before she married Ray Armstrong? A. Yes, I knew her.

Q. You knew the family well? A. No, not all of them.

Q. Why do you say you kept it in "her" garage—was it hers? A. Mr. Armstrong's garage. We were talking about her.

Q. Have you discussed this case with anybody? A. No, sir.

Q. Nobody? A. No, sir.

Q. No one knew what you were going to say? A. No, sir.

(And thereupon witness left the stand.)

And thereupon the plaintiff, to further maintain the issues upon her part, called as a witness,

Mary Buchert (Mrs.),

who, being first duly sworn, testified as follows, to wit:

Direct Examination

By Mr. Sibbald:

Q. Will you state your name? A. Mary Buchert.

Q. Where do you reside, Mrs. Buchert? A. 732 Mt. Hope road, Price Hill.

Q. Mrs. Buchert, how long have you known Mary Armstrong? A. I knew her all my life.

Q. How often, as younger people, did you come in contact with her? A. I went with her sister that passed away; and we visited her on Stabler street maybe once or twice a week, and on Clark street I visited her.

Q. Calling your attention to Stabler street, what did you see her doing there? A. Always forever working or answering the phone. It was upstairs, and she had to go upstairs to answer it.

Q. And what about when she was on Clark street? A. The same thing. The office was downstairs then, and there was a gas pump outside, and she would often be busy at that.

Q. How often did you see her on Clark street? A. I had a friend then living on Clark street. Maybe once a month.

Mr. Sibbald: Cross examine.

Cross Examination

By Mr. Schwartz:

Q. You are related to her? A. No; no relation at all. Just lifetime friends.

Q. Is your daughter your brother's daughter married to a relative? A. Yes, but that doesn't make any difference.

Q. Married to whom? A. Mrs. Armstrong's brother.

Q. When you visited her on Stabler street, is that where she lived? A. No, she lived on Sixth street.

Q. What was your purpose in visiting her there? A. I went with her sister, and knew her real well, and we would just run in.

Q. And you say the same thing occurred on Clark street as on Stabler? A. Yes, sir.

Q. The 'phone was upstairs on Clark street, just as on Stabler street? A. No, downstairs on Clark street. The office was downstairs on Clark street.

Q. Have you talked this case over with anyone? A. No, I haven't.

(And thereupon witness left the stand.)

Mr. Sibbald: The plaintiff will rest, may it please the court.

And thereupon the defendant, to maintain the issues upon his part, offered the following evidence:

Mr. Samuels: Your Honor please, I want to offer in evidence the depositions taken on January 29, 1953 in Miami, Florida, of Elizabeth M. Arleson, Bertha E. Cormack, Sadonna Naylor, T. R. Lupton; Fred W. Bell and W. G. Ward.

(Said deposition has already been admitted in evidence by the court (page 83 of the record) as Exhibit 4.)

Afternoon Session, Thursday, April 2, 1953, 2 o'clock.

Mr. Samuels: If the court please, I wish to offer in evidence an exemplified copy with triple certification, of the record in case of Raymond C. Armstrong v. Mary Armstrong, 140311-H, in the Circuit Court of the Eleventh Judicial Circuit in and for Dade county, Florida, consisting of a bill of complaint; order for publication showing—proof of publication; mailing publication returned by the postmaster not found; military affidavit; order of reference; motion; amendment to bill of complaint showing the Hermosa avenue address; new military affidavit; new order for publication; motion for reference; order on same; proof of new publication and a transcript of the testimony of the witnesses who were Mr. Anderson, Mr. Bell, Mr. Ward; report of the commissioner appointed by that court and the decree rendered by the court.

The Court: So much of this record that has just been offered as was not put in evidence by the plaintiff in her case will be admitted. There is no necessity for encumbering the record by putting in the same thing twice. The record will be admitted as Exhibit 8.

Said record in case 140311-H, Florida court, having been admitted in evidence by the court, is hereto attached and made part hereof, marked Exhibit 8.

Mr. Samuels: I want to introduce and read into the record papers in connection with the case of Mary Armstrong against Raymond C. Armstrong, Court of Common Pleas, of Hamilton county, Ohio, No. A-127053, wherein orders were made by Judge Ryan of this court, being a partition case to partition the farm on Sheeb road, and the Goshen farm, and also a large number of lots in the Armstrong

Addition to Woodlawn, all of which were in the joint names of the two parties, and which have been disposed of and there has been paid into the sheriff's office, for the two farms $17,660, and as to those lots I spoke of $3,750.

Mr. Sibbald: Are you putting in the entire file?

Mr. Samuels: No, just that part of it.

Mr. Sibbald: I have had a little difficulty in trying to determine in my own mind how that partition suit should be handled in this branch of the litigation, if the court please. That matter has not been finally determined by Judge Ryan. There was an order of partition, first as to the two farms, and Mr. Armstrong elected to take those farms at the appraised value, and subsequently assigned his election—or in some manner or other he had the money paid into court from a Louisville bank and title was taken in some relative of his. That money is lying in the bank account of the sheriff under an order by Judge Ryan that there was to be no distribution of it until the balance of the property consisting of these lots had been sold, and he had passed upon an accounting between the parties arising out of their ownership of all the land. Some of those lots have been sold, after Mr. Armstrong attempted to have the court declare that he and his wife were holding them as trustees for a brother of his—after the court decided that against him then he ordered the lots which were not under contract to be sold, sold by the sheriff. Neither party elected, the sheriff advertised and sold them, and also has that money in his possession. Likewise under an order there is to be no distribution until the court has presided over an accounting between the parties. The remainder of the lots, those on which there were outstanding contracts to sell have not been sold, the court has not determined how we

are to go about that. I don't know how that should come into this case at all. There is no question but what the two were owners in common. Their rights as to those funds can fully be determined before Judge Ryan, and I don't see the materiality of them in this case.

The Court: I was going to ask that question of Mr. Samuels, how they are material to the issue here.

Mr. Samuels: The question Your Honor will have to determine is, what they have, and here is over twenty thousand dollars of which she would get half, and I have another paper showing lots that have not been sold, which may produce another five thousand. Taking in connection with whether or not they have an individual ownership.—It gives a complete picture of their net worth.

Mr. Sibbald: By the time the case Judge Ryan has is finished it may be five thousand. It occurs to me we should not go into that phase of the case, because Judge Ryan has the matter in his case.

Mr. Samuels: I think it is the same as the joint bank accounts—

The Court: I don't think so. I think you have a perfect right to show what each one of these parties has in the way of property, as bearing on the question of the plaintiff —what she should be allowed in the way of alimony; but I can't see the relevancy of papers in another lawsuit.

Mr. Samuels: If he will stipulate—

Mr. Sibbald: I will stipulate the amount the sheriff is holding from the sale of the property or the election, and the fact that there is an additional number of lots to be sold; that we have not determined how they are to be sold— or the court has not determined—and also a matter of

accounting between the parties upon past transactions in the handling of that real estate in unknown amount.

Mr. Samuels: That is agreeable.—May I read into the record these figures?—In connection with the sale of the Sloeb road property described as parcel 104 in the partition suit, $1,160 was paid. The farm at Goshen in Clermont county, parcel 105 in the partition suit, the sum of $17,660 has been paid to the sheriff. In connection with the sale of a group of lots in Woodlawn, the Armstrong Addition to Woodlawn, that were sold at public sale by the sheriff, $3,750 was bid and the amount paid into the sheriff's office and is there now. In addition, there is pending in that case the question of disposition of a large number of lots in the joint names of the parties—

The Court: How many?

Mr. Samuels: I would say forty or fifty, but those were under contracts of sales. The sales mention the names of purchasers, and the amount paid on account is mentioned, and that is a matter as Mr. Sibbald said, that we will have to wait until it is determined, as to how the disposition is to be handled or sold. As we both agree, several thousand dollars should be realized from them. In addition, Mr. Sibbald is making claim for an accounting in that same partition suit of Mr. Armstrong on behalf of Mrs. Armstrong for certain money he claims Mr. Armstrong has received in connection with the contracts for the sale of the lots, and which Mr. Sibbald claims Mr. Armstrong has not accounted to Mrs. Armstrong for.—Is that correct, Mr. Sibbald?

Mr. Sibbald: I think that states it. While we are on that subject shouldn't we have some stipulation here that the

properties owned jointly by the parties, this acreage in Indiana—

Mr. Samuels: I will bring that out in Mr. Armstrong's testimony.

And thereupon the defendant, to further maintain the issues upon his part, called as a witness,

John G. Adrian,

who, being first duly sworn, testified as follows, to wit:

Direct Examination

By Mr. Samuels:

Q. Will you state your name, please? A. John G. Adrian.

Q. And your address is what, Mr. Adrian? A. 2818 Stratford avenue, Clifton.

Q. Well Mr. Adrian, what is your age, please? A. Sixty-seven.

Q. Do you know Mr. Armstrong, Ray Armstrong? A. Yes.

Q. Do you know Mrs. Armstrong? A. Yes, sir.

Q. How long have you known them? A. I think since 1917 I believe it was, when they bought the place.

Q. Where did you first meet them, Mr. Adrian? A. At the garage.

Q. Where? A. On Clark street, 812 Clark street.

Q. Where did you live at the time? A. At that time I lived on Cutter.

Q. Where, on Cutter? A. I think it was 1324.

Q. What kind of business did he have on Clark street? A. Automobile and repairing business.

Q. And in those days were the tires solid, or the tires of today? A. Solid.

Q. Used on ambulances? A. Horse-drawn vehicles.

Q. Did you have an automobile at that time? A. Yes, sir.

Q. Where did you keep it? A. I kept it in Mr. Armstrong's garage.

Q. And how often would you come to that garage in connection with your automobile? A. Oh, I was there—when I wasn't working very nearly every day.

Q. Up to about 1923, from 1917 to 1923, you were employed? A. That's right.

Q. And from about 1922 or 1923 you quit your work and went into business for yourself? A. That's right.

Q. Did you buy out his business? A. I bought out the rubber tire end.

Q. And who did you deal with? A. Mr. Armstrong.

Q. Now after you quit your work—you were working for the Merrell Chemical Company, were you not? A. Yes, sir.

Q. When you quit how long were you idle? A. Well, I quit in April.

Q. Approximately how much time were you idle between quitting your job and buying this business? A. About a year.

Q. And when you had your machine there, from between 1917 and 1922 or early 1923, did you see Mr. Armstrong there? A. Oh, yes.

Q. What was he doing? A. Well, he would be working around the garage re-tiring buggy wheels and fixing automobiles.

Q. Was there a gasoline tank there? A. I think there must have been one in front at that time, but I just can't remember.

Q. I will ask you whether or not, during the years from 1917 to 1922 when you quit at Merrell's and were idle for a while, whether you saw Mrs. Armstrong around there at the garage, or in the home, or wherever it was? A. Oh, I saw her around there, yes.

Q. Where did you see her? A. Well, I didn't see her very often, because she wasn't in the office very often.

Q. Where would you see her—in the office? A. Yes.

Q. And you say you were there practically every day about your machine? A. Yes.

Q. And what if anything did Mrs. Armstrong do when you did see her in the office? A. She always went upstairs.

Q. Did you ever see her do any work in the office? A. I never saw her. She may have did it. You see I was not around the office much; I was out in the garage.

Q. The office has a large window? A. That's right.

Q. And you can see from the outside into the office, can't you, Mr. Adrian? A. Well, there is a little window there, but you couldn't—

Q. Did you go in the office occasionally, or frequently? A. Oh, not very often. A lot of times I did go in there.

Q. Did you see Mrs. Armstrong during those four or five years, working around in the garage? A. No.

Q. Around the tires or pump, or the accessories sold in connection with the business? A. Not while I was there.

Q. When you left Merrell's, and loafed as you say for a year, how often would you come to the garage during that period that you were neither employed or in business? A. Very near every day.

Q. And how much time would you spend nearly every day when you were there? A. Well, I imagine I would be

there four or five hours, or maybe more. I can't just remember.

Q. A sort of a loafing place? A. That's right.

Q. In those four or five hours practically every day, did you see Mr. Armstrong working as he had been?

Mr. Sibbald: Objection as to the form.

The Court: Objection overruled.

A. Yes, sir.

Q. I will ask you, during the same period that you were there four or five hours a day, whether or not you saw Mrs. Armstrong over in the office or in the garage either one? A. I seen her in the office, but not in the garage; but she wouldn't stay very long.

Q. How many times during that approximately one year when you were spending four or five hours there nearly every day, did you see Mrs. Armstrong in the office?

Mr. Sibbald: I object again to the form.

The Court: Objection sustained, not on the basis that it is leading, but I did not understand him to say he was there four or five hours every day.

Q. Is that correct, that you had stated that you were there approximately four or five hours almost every day during the approximately a year that you were neither employed nor in business? A. Yes.

Q. Now during that period of time, Mr. Adrian, I ask you how many times you saw Mrs. Armstrong in the office? A. Well, I couldn't answer that question. That has been so long ago I have forgotten it.

Q. Was it frequently or infrequently?

Mr. Sibbald: I object, on the ground that he is attempting to cross examine his own witness.

The Court: Overruled.

A. Frequently.

Q. What would she be doing? A. That I could not say.

Q. Did you observe her at the time, as to what she may or may not have been doing? A. No.

Q. How long a time would she be in the office at the times when you saw her? A. Well, as I said before, when I would come there if she was in the office she would go upstairs. Sometimes I would be going out with Ray to get wheels, and she would be in the office, and when we got back she would go back upstairs.

Q. How many times a week—can you state how many times a week you saw Mrs. Armstrong in the office? A. No, I couldn't say.

Q. And during that period of time I think your testified you did not see her work in the garage at all; is that right? A. No, I did not.

Q. Did you ever visit with the Armstrongs? A. I think once or twice. I think I went with them out in the country sometimes, but I can't just remember.

Q. Did you go up in their home above the garage at any time? A. Yes.

Q. They lived above the garage? A. That's right.

Q. In 1923 or '4 I think you said you bought out the business? A. That is the tiring business.

Q. Where is your place of business with reference to the Armstrong's place of business? A. We are across the street.

Q. In 1923 who owned the building, or leased the building which you now are in across the street? A. Ray had a lease on it at that time. Doctor Kolb owned it.

Q. Did you take over the lease? A. Yes.

Q. With whom did you negotiate concerning it? A. With Doctor Kolb.

Q. How about the Armstrongs: did you negotiate with Mr. or Mrs. Armstrong? A. Just Mr. Armstrong.

Q. Did you buy the Armstrong building, in which the garage was situated? A. Oh, no, not the garage, but the other building.

Q. In the negotiations for the purchase of the tire business and the lease across the street, did you at any time have any negotiations concerning those matters with Mrs. Armstrong? A. No.

Q. What business are you in now, Mr. Adrian? A. I have my own shop at 812 Clark street.

Q. What kind of business is it? A. All juvenile, baby carriages, cribs and so on.

Q. When you dealt with Mr. Armstrong at the garage, did they do any re-tiring of baby carriages? A. Yes, sir.

Q. When did you go into the Adrian carriage business, or whatever you call it? A. The last of February, 1924.

Mr. Samuels: You may cross examine.

Cross Examination

By Mr. Sibbald:

Q. Mr. Adrian, you said something about a window at the office. Was there a window in the back of the garage? A. There is a small window back there. You can go into the garage—do you mean a window into the office from the garage?

Q. Yes. A. Yes.

Q. How large a window is it? A. Well, it is about half as large as one of these. I don't know just how large it is.

Q. Half of one of those sections? A. Oh, no, not that large. I imagine it is about three-by-three—a yard by a yard, just a small window.

Q. Was it low or high? A. Just about that high.

Q. In order to see into the office you would have to look in that window? A. Yes; and you would have to walk over to it too.

Q. You didn't do that very often, did you? A. I didn't have any occasion to.

Q. And when you did go over there to either get your car or to loaf, as you call it, you went into the garage and not into the office? A. That's right.

Q. Mr. Adrian, you say that there was a written lease with Doctor Kolb? A. A lease? No. Ray had a lease.

Q. Well, was there a written lease? A. I don't know whether there was or not. I know I went down to see Doctor Kolb to take over the building, and he said Ray had a lease, and if it was all right with Ray he would let me have it; and I bought the building.

Q. You never saw a written lease for it, did you? A. No.

Q. When did you say it was that you went into the baby carriage business? A. The last of February 1924; thirty years ago.

Q. And at that time, what about this garage business? Who was handling it? A. I think Ray sold that; I think he sold it at the time. That is when I took over the rubber tire end.

Q. Well, the fact of the matter is that the garage business had been sold to the Stevens people months before you started in business, had it not? A. No. I had the place across the street. I didn't own the garage.

Q. I didn't say you owned the garage, but didn't Howard Stevens have the garage under lease— A. I don't know about that.

Q. (Continued) —for several months before you started in business across the street? A. I don't know about any lease or anything, but he was over there; and I don't know nothing about the transaction.

Q. He was there several months before you opened up? A. I wouldn't say how many. I can't remember that; it is too long ago.

Q. You are not acquainted with that? A. No occasion to be.

Mr. Sibbald: That is all.

Redirect Examination

By Mr. Samuels:

Q. During those several hours that you spent there during that period, how much time would you spend in the office at Ray's place? A. I never spent any time in the office.

Q. You were always in the garage? A. Yes.

Q. And where did you live during that year or so that your were loafing? A. On Cutter street.

Q. And how would you go into the garage? How was the building— A. There were two doors in front at that time. There was a double entrance there.

Q. Where did the two doors lead to? A. Into the garage. It was a partition there, and you could drive in on one side or the other.

Q. Was there a door leading into the office from Clark street? A. Yes.

Q. But you always went in through the garage way? A. Yes.

Mr. Samuels: That is all.

(And thereupon witness left the stand.)

And thereupon the defendant, to further maintain the issues upon his part, called as a witness,

Raymond C. Armstrong,

who, being first duly sworn, testified as follows, to wit:

Direct Examination

By Mr. Samuels:

Q. You are Raymond C. Armstrong? A. Yes.

Q. Where do you live, Mr. Armstrong? A. Live at 922 Northwest Eighth Street road, Miami, Florida.

Q. Mr. Armstrong, I am going to ask you to speak loudly. How old are you? A. I am sixty-seven years old.

Q. When were you married to Mary R. Armstrong, and where? A. I was married to Mary R. Armstrong in 1917 in July, at the court house in Cincinnati.

Q. How old were you at that time? A. At that time I was thirty-one.

Q. And how old was she? A. She was 25, or six, or seven.

Q. How long had you known and gone with Mary Donovan, later Mary Armstrong, prior to your marriage in July 1917? A. Approximately ten years.

Q. What were you doing when you first met her? What was your business or occupation? A. When I first met Mrs. Armstrong I was with my father, and also had a little business of my own.

Q. What kind of business was your father in at the time? A. In the export carriage business.

Q. What did you do for him? A. Well, I learned the blacksmith trade, and was a helper for several years. I

worked in the printing shop, and the paint shop. There wasn't any part of the buggy business that I didn't know something about, in the manufacturing of it. I worked in every department. I also drove a team for my father.

Q. Did you receive a salary or wage of any kind from your father? A. I did not receive any wages from him. I lived at home, and he paid my expenses and gave me spending money until I was twenty-one.

Q. At what age did you start with him? A. Well, I started with him when he started the Armstrong Company. I imagine I was fifteen or sixteen years old.

Q. Now while you were working for your father, between the ages of fifteen or sixteen and twenty-one, what other work did you do? A. I was always buying and selling. I also traded and bought horses. I sold Mr. Sullivan, the undertaker, a horse, and Vitt & Stegmer a team. George M. Shaffer I suppose I sold a dozen horses. I sold Mr. Moran that was on Sycamore street between Fourth and Fifth several horses.

Q. After you were twenty-one your father put you on a salary? A. Yes, sir.

Q. What was it? A. Eighteen dollars a week.

Q. How long did you continue in that way? A. That continued until about 1912, or the latter part of 1911, with the exception of one season that I was in the show business.

Q. How old were you in 1912—what year were you born? A. 1886.

Q. You were twenty-five or six years at that time? A. Around that.

Q. What happened then in 1912 or thereabouts, so far as you were concerned? A. I went in business for myself. I left my father and went in business for myself.

Q. During the time that your father did your father own any real estate that you know of? A. Oh, he owned the factory, and several houses, but

Q. I am speaking of out in Woodlawn. A. Well no; he bought that I think in 1917.

Q. Now in 1912 you say you started in business. What business, and where? A. Well, as I said before, I was in business while I was working for my father, of buying rubber tires. My father never went after that work, but I did. I drove the team at that time, and I would stop over the river at Linneman & Yates, the undertakers.

Q. I want to get it down to 1912. My question is, what kind of business, and where? A. Re-tiring buggies, and carriages; selling carriages, harness parts, and buggy parts, wheels, shafts, anything pertaining to buggies.

Q. And where was the business? A. On Stabler street.

Q. And that is in the west end near State street? A. Just a half square east of State avenue.

Q. Do you remember the number? A. I am quite sure it was 2162.

Q. What kind of a place was it, a store, or building, or what? A. It formerly was the Harris Planing Mill Company. I rented the building from Mrs. Harris. He was dead.

Q. What type of building was it? A. It was a planing mill.

The Court: Is there any relevancy to what kind of building it was?

Mr. Samuels: Perhaps not, Your Honor. We will pass that.

Q. Tell me, how much money did you have when you state that you started in this business on Stabler street, if you know? A. Well, I had approximately $3,000; but I had a stock of merchandise besides.

Q. That is, tires? A. Tires, and buggies and cars, and I went to the unclaimed freight auctions and bought up lots.

Q. You did trading? A. As long as I can remember.

Q. When you opened up the business on Stabler street, had you known Mary Donovan? A. Yes.

Q. How long had you known her before you started the business in 1912? A. I imagine about five years.

Q. Where did you live when you started in business in 1912, before you got married? A. Well, I lived with my father up until the day I started in business. The day I started in business my father and I had an argument and I would like to tell what it was about.

Q. Where did you live when you went in business? A. On Stabler street. There was a large office and I used it as my home.

Q. How long did you continue to live there? A. Until 1917.

Q. Until you married? A. I married in 1917, the day before I took over Mr. Shaffer's place on Clark street.

Q. I will ask you whether or not, when you started in business with this capital of $3,000 that you stated you had, and the merchandise, as you have stated, I will ask you whether or not Mrs. Armstrong, or Mary Donovan as she was then, either gave you or advanced to you, or loaned to you any money in connection with the starting of the business or otherwise. A. I am under oath here. Mrs. Armstrong never loaned me five cents of money.

Q. Did she give you any money? A. She never gave me any money. It would have been impossible for her to give me any under the circumstances.

Q. What work, if any, did she do when you first met her? A. Well, she worked at several distilleries. I didn't know her when she worked at Higgins, but she told me she worked at the Globe-Wernicke Company and Gibson Art Company. I went to the Gibson Art two or three times a week and drove her home. I had the finest horse in Cincinnati, barring none.

Q. What type of work did she do? A. Factory work.

Q. To your knowledge, how far had she gone in school? A. I don't know.

The Court: I certainly do not see what relevancy that has.

Mr. Samuels: She claims she did bookkeeping, Your Honor.

Q. When you were on Stabler street was she working? A. Yes.

Q. Did she ever work for you while you were in business on Stabler street? A. For six months before we were married, approximately. It may have been a little less.

Q. What did she do, Mr. Armstrong? A. Answered the telephone, and cooked my meals, and cooked her own meals, and I lived there and had the stuff.

Q. And she helped out? A. Yes, that's right.

Q. Now you said in 1917 you got married. You moved to Clark street. What did you do with the Stabler street business at that time? A. I kept it.

Q. What kind of business did you have on Clark street? A. Rubber tires, and automobile accessories and so on.

Q. What was it—a store and garage? A. It was an automobile garage, and there were two lots—it was partitioned

off. 1917 was built first, and 1918 was built a year or two after.

Q. Where did you live at that time? A. Over the garage. We had a flat over the garage.

Q. How large was it? A. Five rooms and bath. One of the finest baths of its day in Cincinnati.

Q. Did you go to housekeeping? A. Yes, sir.

Q. You never had any children? A. No, sir.

Q. Now Mr. Armstrong, at the time you went there to Clark street, did you buy the business, or what? A. I did not buy it at that time. I rented the business in the beginning.

Q. And how many people were employed by you during the years you were there? A. I always had one man working for me.

Q. How long did you operate the business on Clark street? A. From 1917 to 1923.

Q. And what was your work in connection with the operation of the business—that is, just what did you do there? A. Well, I did everything around the place; applied rubber tires, repaired cars, greased cars, and repaired tires. Anything that came in, I done.

Q. Did you sell accessories? A. Some accessories, but I didn't depend on that. I did have automobile tires and sold some of them, but my main business was selling automobiles and solid rubber tires. The solid rubber tire was the main business.

Q. Were those new or used automobiles? A. Used. I bought them and fixed them up and sold them.

Q. Did you have a gasoline pump around the place? A. Had a gasoline pump on the sidewalk, a sidewalk pump.

Q. Did you sell gasoline in addition to your other matters? A. Yes, sir.

Q. What was the extent of that business? A. That was very little. I didn't sell—didn't average seventy-five gallons a week. The Standard Oil Company will have a record of that.

Q. Never mind. Just answer the question. A. There was one cent profit, and I didn't pay any attention only for my own work, and one truck that bought twenty or twenty-five gallons at a time.

Q. You did no transient business? A. No, that didn't amount to anything.

Q. Did you furnish the apartment, or was it furnished? A. Oh, no, I furnished it.

Q. Who bought the furniture? A. I did.

Q. Who paid for it? A. I did.

Q. Did Mrs. Armstrong contribute anything at the time you got married, by way of money or anything of value? A. Not five cents.

Q. Did any member of her family, her parents or sisters contribute anything at the time you got married by way of gift, loan, donation or anything else? A. No. Her mother gave us a blanket for our wedding present. That is all the gifts we ever got from any of her family.

Q. Will you tell the court what your best judgment is as to what you were worth at the time you married in July of 1917, that is your financial worth? A. Well, I bought Mr. Shaffer out.

Q. Just answer the question if you can. Did you buy him out after or before you were married? A. Well, I bought him out before I was married.

Q. What did you pay him? A. I paid him $5,500, but only $4,500 cash. I gave him a one year note for the thousand.

Q. When was that? A. That was in 1917.

Q. Before you were married? A. Yes, just a week or so before.

Q. What were you worth when you married, financially? A. Not counting that—

Q. Counting everything. A. Oh, I will say that with the mortgage I had on Stabler street, and what I bought from Mr. Shaffer, ten or twelve thousand dollars.

Q. Did you ever have any partnership arrangement with Mary Donovan before you were married?

Mr. Sibbald: I object.

The Court: Objection sustained.

Q. Was there any agreement of partnership entered into between you and Mary Donovan before you were married?

Mr. Sibbald: I object.

A. None whatsoever.

The Court: Same ruling.

Q. After you were married did you and Mrs. Armstrong have any written agreement of partnership? A. No, we did not.

Q. Now when you were on Clark street, you were there from 1917 until 1923? A. That is correct.

Q. Was this business prosperous or otherwise? A. I made money there; yes, it was prosperous.

Q. This apartment that was upstairs, how did you get to it—from the street, the building, the garage or what? A. You could get to it two ways, from the street or the office, a hall that led up to the upstairs.

Q. I will ask you, Mr. Armstrong, during those six years you were in business on Clark street, whether or not Mrs. Armstrong did anything in connection with the operation of that business on Clark street that you have described? A. When I would go out I would ask her to sit downstairs in the office—that is, if the boy was out, or the man—I had a man one time and a boy another time. If the one I had working for me was out, and I was called out to an undertaker for a wheel I would ask her to sit in the office until I came back. Invariably when I came back I would see her up at the bay window. She loved that bay window; she was in that bay window most of the time she wasn't doing her housework upstairs.

Q. How frequently were you away from the place of business? A. Not foo often. Of course that varied. You wouldn't know, and I wouldn't know.

Q. What is your best recollection? A. I would say maybe two or three times a week would be a lot.

Q. For how long a time? A. Sometimes an hour; if I went to the farm it was longer.

Q. Whose was the farm? A. Woodlawn; the subdivision.

Q. When did you come into possession of the lots in Woodlawn? A. That was a farm bought from the proceeds of the Armstrong Company, me being a partner in the company, and that also made me a partner in the lots.

Q. When was that? A. I think it was in 1917 or '18 that we bought the farm.

Q. And what percentage of the lots did you get?

Mr. Sibbald: I thought the deed would be the best evidence. I object to his putting his construction on it.

The Court: Sustained.

Q. How many brothers were there in addition to you, with your father? A. Three brothers.

Q. Four and your father? A. Yes, sir.

Q. Were they partners? A. Yes, sir. I have a half-brother, but of course he was born after the business and he was not a partner; and I have a half-sister, and she was not a partner.

Q. Were those lots placed in your name? A. Eighty-seven were placed in my name.

Q. And what did you do with them? A. I sold them.

Q. Outright, or otherwise? How did you sell them? A. I sold them $500 down and $45 a month and interest.

Q. And what security did you take for the balance? A. A mortgage.

Q. When they were in your name, in whose name did you place the mortgage? A. I placed the mortgage in Mrs. Armstrong's name and mine.

Q. Both names? A. Both names.

Q. And what was the amount of the mortgage? A. The amount of the mortgage must have been $4,000, because they were forty-five hundred dollar lots.

Q. And were you—first let me ask you, who handled the transaction? Where were the moneys paid on those mortgages? A. Cincinnati Bank & Trust Company.

Q. In whose account? A. In a joint savings account.

Q. How did you come to put that in the joint account? Did Mrs. Armstrong request it? A. Well, she requested it, and I put it in both names.

Q. Was there any trouble about it?

Mr. Sibbald: I object.

The Court: The presumption in law is that when a man puts something in the name of his wife that it is a gift.

Q. When you sold the business on Clark street in 1923—by the way, I think you stated you bought the building on Clark street. When was that? A. Well, I don't really know. It was between 1917 and 1923.

Q. When you sold the business did you sell the building? A. I didn't sell the business. I sold the building and sold the stock, with the exception of some rubber tire merchandise and babby buggy wheels I sold to Mr. Adrian.

Q. And where did you go from there? A. To Miami, Florida.

Q. Will you tell the court what you were worth financially from the sale of the real estate and disposition of the business, and the sale of lots and so on when you left Cincinnati in 1923 and went to Miami, Florida? A. I think I had $17,000 cash, and about 600 shares of General Motors stock, and of course those lots, or the farm at Woodlawn, Ohio.

Q. I will ask you whether, during the years 1917 to 1923, Mrs. Armstrong contributed any money towards the operation of the business, or gave you personally any money? A. No, she did not.

Q. Did any member of her family do that? A. No, sir.

Q. Will you tell the court what provision you made during those years for the support of your wife? A. I supported my wife and myself. She had everything she wanted. She never asked for anything that she was refused.

Q. Now she kept house of course? A. Oh, yes.

Q. In addition to that, what else did she do to pass the time, other than the little time she spent in the office? A. Well, she went out, down to her folks, and she kept house. She didn't belong to any clubs or anything like that, if that is what you mean.

Q. Did she read, or attend lectures? A. She used to read. That is what she did, and sat in the bay window and watched what was going on.

Q. What did she read? A. Well, then she read almost anything, but in later years mostly crime books and magazines.

Q. When you went to Florida in 1923 what did you do there? A. I went with Mr. Shaffer; he had a used furniture store.

Q. Was that the Mr. Shaffer from whom you bought the business on Clark street? A. Yes, sir.

Q. How long were you with him? A. I was with him for eight or nine months.

Q. You stated you owned 600 shares of General Motors stock. Did you own any other stocks prior to 1924? A. No, sir.

Q. Where did you go from Miami in 1924? A. I came back to Cincinnati for a short time, and Mrs. Armstrong stayed out with my folks at Woodlawn, and then I went back to Florida by myself.

Q. When she came back to Miami, where did you go? A. In 1925 we went to the Isle of Pines, south of Cuba. At that time it did not belong to Cuba; it belonged to the United States.

Q. How long were you there? A. From 1925 to 1928.

Q. What did you do there? A. I was a farmer, I suppose, you would call it. I had crops, and at one time had thirty-five men working for me; planting vegetables and selling to the

Q. Did you buy land? A. Yes, sir.

Q. And was there a building on it? A. Yes, sir.

Q. Did you live there? A. Yes, sir.

Q. And grew crops? A. Yes, sir.

Q. What did you grow there? A. Well, mostly grapefruit, and vegetables, eggplants and watermelons.

Q. How long were you there? A. From 1925 to 1928, but we would spend our summers in Miami. I would go over to Miami and spend—I didn't stay there the year round.

Q. During that time did you have a home in Miami? A. No. I stopped at the hotel one year, and an apartment house the other.

Q. And when you lived on the Isle of Pines, those three years, had that been a successful or unsuccessful venture? A. It turned out to be very successful indeed.

Q. To what extent did it add to your financial worth? A. I know I had about a thousand dollars cash more than I went over there with, besides one forty acre estate; one house and ten acres—a very good house, poured concrete—and another place of twenty acres with a small house on it.

Q. In whose name was the title to that property? A. In my name.

Q. Mr. Armstrong, I show you a card marked for identification "E", and ask you to tell the court what that is. A. That is a picture I took in my grove.

Q. In the Isle of Pines? A. That is one of my groves.

Q. I show you what is marked for identification "F", and ask you what that is. A. That was the house where we lived. That was the home place that the former owner spent forty thousand dollars on.

Q. And I show you identification "G", and ask you what that is. A. A poured concrete house on the ten acres belonging to Mr. Hoffman. We called it the Hoffman house.

Q. In which one did you live? A. In this place. That is her handwriting on there.

Mr. Samuels: I offer that in evidence, if the court please.

Mr. Sibbald: I object to it, as being immaterial.

The Court: Sustained.

Mr. Samuels: I will proffer the picture and except to Your Honor's ruling.

Q. From the Isle of Pines you went where, in 1928? A. From the Isle of Pines we went to Miami, Florida.

Q. And what did you do there? A. I done very little, with the exception of trading in stocks.

Q. And how long did you live in Miami, from the time you got there in 1928? A. I still live there.

Q. Was it continuous, or otherwise? A. Yes. We never left there. From 1928 we never left there.

Q. And where did you vote from 1928 until the present time? A. Miami.

Q. Where did Mrs. Armstrong vote? A. In Miami.

Q. Where did you pay county taxes? A. Miami, Florida.

Q. From where did you send your income tax return? A. From Miami, Florida.

Q. Now then, you say you traded in stocks. In addition to the 600 shares of General Motors stock, were there some splitups in that stock? A. Yes, sir.

Q. How many, do you know? A. Well, I don't know how many, but that 600 shares today is 2,250 from that original 600.

Q. And when you say 2,250— A. That is the new stock.

Q. Actually 1,225— A. 1,125 of the old.

Q. That has not been turned in? A. No, sir. I did not have it to turn it in. I would have, and they wanted me to.

Q. Do you mean that the 1,125 could be turned in for 2,250 of the new stock? A. That is correct.

Q. What other stock did you buy? A. I bought thousands of shares.

Q. In whose name are the 600 shares of General Motors? A. In my name.

Q. Was any of it in her name, or jointly? A. No, never. She knew nothing about it. She did not want me to trade in stocks.

Mr. Sibbald: If the court please, I object to what she knew or did not know.

The Court: What difference does it make whether she objected to or acquiesced in it? He bought it.

Mr. Samuels: We claim she not only was not co-operative, but she was abusing him, contradicting and interfering with him, and that in spite of that he created the estate.

The Court: What difference does it make? If your theory is right, this man is already divorced. How can you try it over again?

Mr. Samuels: They are asking Your Honor to grant a divorce, and I am defending that suit. My position is that he is divorced and that case is over.

The Court: Objection sustained.

Q. So in 1928 you went to Miami and have stayed there ever since? A. Yes, sir.

Q. Did you buy any real estate there? A. No, I traded for it.

Q. Did you have a home? A. Yes. I traded part of the Isle of Pines for two homes there. I would like to tell how it came about.

Q. Just answer the questions. You say you traded. What part of the Isle of Pines did you trade for a house in

Miami? A. Well, I advertised the Hoffman place for sale in—sale or trade, in the Miami Herald, while I was still living on the Isle of Pines. I had quite a few answers, and Mr. Heflinger, a real estate man in Miami answered, and I went over to Miami, and he came over to the Isle of Pines and looked at mine, and I went over and looked at what he had to trade for his client. It was a house at Coral Gables.

Q. What did you trade? A. This Hoffman place.

Q. Go ahead. A. While I was over there, I had ninety acres that I bought right after I came back in 1910 from New York, and traded Doctor Barr seventy acres of that for this house on Thirty-first street. That was a very good trade. I didn't expect that when I went there, and I put that house in Mrs. Armstrong's name. She was on the Isle of Pines. That was the first piece of property that was ever in her name. The house at Coral Gables I put in my name.

Q. And what did you do with the house on Thirty-first street? A. The house on Thirty-first street I sold for $3,200. That was part of—

Q. Who got the money? A. I put it in the First National Bank of Miami, twenty-eight hundred and something. There was brokerage fees. And I paid $150, three months' rent.

Q. What did you do with the house at Coral Gables? A. Traded it for the Sheeb road place.

Q. In whose name was the house at Coral Gables? A. Mine.

Q. And the Sheeb road? A. In both names.

Q. Was there any money in addition on that trade? A. No, it was an even trade.

Q. What became of the rest of the Isle of Pines property? A. The stock and the place where we lived I traded to Mr. Dinet of Cincinnati, for 600 acres in Indiana and a house in Newport. It was a ten-room apartment house, and the Western & Southern held a mortgage of $3,500.

Q. What did you do with that Newport house? A. Sold it for $2,200, and gave her a hundred, the real estate man a hundred and put the $2,000 in the Cincinnati Bank.

Q. In whose name was that house? A. May have been in both; I am not positive; either mine or both.

Q. And the Indiana farm? A. I put that in both names.

Q. What is that worth? A. I traded part of the Indiana farm for the Goshen farm, that just sold for $16,500, and still have 378 acres.

Q. That is in both names? A. Yes.

Q. That has not been partitioned? A. No.

Q. Now what property did you buy next in Miami, after you sold the Thirty-first street house and the house at Coral Gables? A. I bought a lot on the Seabolt Canal and built a house.

Q. Is that a house where you were living until she left? A. Yes, since 1941.

Q. And you live there now? A. I still live there.

Q. That is at the address you gave as your residence? A. Yes.

Q. What did you pay for the lot? A. I happened to be passing down the boulevard, and they were—

Q. Just answer the question. What did you pay for the lot? A. I would like you to know—

Q. What did you pay for it? A. $650.

Q. And you say you built a house on it? A. Yes. There was ten per cent discount for cash.

Q. Tell us about the building, what it cost and who built it. A. I built the building, drew the plans. I had no architect and no builder. I hired the work done by the day, and I think it is a very nice house, and she found fault with it from the minute she went in it.

Q. What would you say is the value of it? A. Around eighteen thousand.

Q. And that was involved in the Florida divorce case, was it not, Mr. Armstrong? A. Yes.

Mr. Sibbald: I object.

The Court: Overruled.

Q. When did you move into that Eighth Street road, or whatever it is? A. In 1941.

Q. And you and Mrs. Armstrong lived there until the last separation? A. Yes, sir.

Q. Now Mr. Armstrong, when you moved to Florida the first time, did you take any furniture from Cincinnati, or buy new? A. I sold the furniture we had on Clark street and bought reed—with the exception of one bedroom set which was made by the Re-Craft people of California and supposed to cost a thousand dollars. I never saw anything else like it, and Mr. Shaffer didn't.

Q. Who bought it? A. I did.

Q. With whose funds? A. Mine.

Q. During those later years did she contribute any money towards the purchase of the property or the furnishings in the home or anything?

Mr. Sibbald: Objection.

The Court: I think he has a right to state as a fact whether she contributed cash.

A. No, she did not.

Q. Now then, when you moved to this Eighth Street road property did you take the same furniture from the other house, or buy new? A. I bought—the Brown Carriage factory was making reed furniture and I bought some from them and some from the Re-Fix on John street.

Q. There was something said about antiques. Did you have any antiques? A. Oh, yes.

Q. Who bought those? A. I bought most of them. Mrs. Armstrong bought some, but not the expensive ones.

Q. Where were they bought? A. Mostly at the Main Street Auction here in Cincinnati.

Q. Who paid for them, Mr. Armstrong? A. I paid for them.

Q. Did Mrs. Armstrong inherit any antiques or other things from her grandparents or parents? A. No, sir.

Q. I will ask you—you stated, I believe, you traded the Isle of Pines, part of it, for the farm in Indiana? A. Six hundred acres.

Q. What did you pay for the Isle of Pines? A. $2,250.

Q. And traded part of it for the Indiana farm and for some Florida property? A. No, for a house at Newport, Kentucky, free and clear.

Q. And what else? A. That is all; those two places.

Q. You still have some? A. I traded one house on the Isle of Pines for the house at Coral Gables.

Q. And the farm in Indiana is in both names? A. Yes.

Q. Was that under contract of sale? A. I had it sold, the 378 acres. I had it sold.

Q. When did you acquire the Hudson Motor stock? A. This that I have I really do not know. I have bought and sold Hudson for years.

Q. What is your best recollection as to when you first bought it? A. Oh, I imagine in the early '40s—that is the Hudson.

Q. When did you get the Murray Corporation of America? A. Perhaps the same time, or a little earlier.

Q. The North American Aviation, Incorporated? A. The North American Aviation I acquired in 1931. I had 1,100 shares of General Aviation, and North American took over the General. I had 1,100 shares of that, and they gave me besides through cash and so on, 1,650 shares of North American for the 1,100 shares of General Aviation.

Q. And when did you secure the TWA? A. In the early part of the '40s.

Q. When you went back to Florida you traded mostly in stocks? A. Yes, sir.

Q. Exclusively? A. Exclusively up until 1929 when the stock market broke. I had stocks on margin, and I owed the Brotherhood Bank $15,000.

Q. These stocks, were they—in whose name were they? A. In my name.

Q. Were they ever in Mrs. Armstrong's or both names? A. Never in her name or both; always in mine.

Q. When the crash came and you owed a great deal of money, did you survive that with some of the securities? A. I survived the crash after a lot of—my father put up to save the General Motors stock, my father put up that entire subdivision with the Central Trust Company. I have it here to show you.

Mr. Sibbald: I object, and move to strike the answer as not representing the best evidence.

The Court: Objection overruled.

Q. Mr. Armstrong, I show you the paper marked for identification "H", and ask you what it is. A. That is a fifteen thousand dollar loan I had with The Central Trust Company.

Q. And shows the securities? A. Yes. I put up 1,150—

Mr. Samuels: I offer that in evidence, if the court please.

The Court: It may be admitted as Exhibit 9.

Said demand note for $15,000 having been admitted in evidence by the court, was marked Exhibit 9, is hereto attached and made part hereof.

Q. Now Mr. Armstrong, so you salvaged the General Motors stock? A. Yes, sir.

Q. Any other stocks you salvaged? A. No. I had a loan with W. E. Hutton and they sold out, sold 200 shares of Briggs in 1933 the day before the bank holiday; 200 shares of Eaton Manufacturing Company the day before the bank holiday. I have the telegram here—

The Court: What is the relevancy of this, Mr. Samuels?

Q. Now, Mr. Armstrong, after you went through this—

The Court: I asked you what was the relevancy of this evidence.

Mr. Samuels: Although he was partially wiped out, through his own ability and efforts he re-created this considerable estate we have today.

The Court: The court doesn't think it is relevant or competent. I assume that everybody who had anything in 1929 probably lost most of it. I see no relevancy to that question, and the question before the court. This court will not permit you to go over thirty-seven years of married life and every transaction this gentleman had. I don't think it is relevant or competent.

Q. Coming down to the—some mention was made by Mrs. Armstrong in her testimony about a pet monkey. I want to show you some photographs, pictures of you with that monkey. A. Yes, that is me and the monkey.

Mr. Samuels: I will offer this print in evidence, if the court please.

The Court: It may be admitted as Exhibit 10.

Said picture of witness with monkey having been admitted in evidence by the court, was marked Exhibit 10, is hereto attached and made part hereof.

Q. What was this monkey, a pet of yours? A. Yes, sir.

Q. I will ask you whether it was a pet of Mrs. Armstrong's also? A. Well, she liked it very much. I wanted to dispose of the monkey, and Mrs. Armstrong said she would never dispose of Joe.

Q. Was it vicious? A. It was to everyone except to me.

Q. How about to Mrs. Armstrong? A. Yes.

Q. Coming back to the 1940s. Up to that time, what difficulties if any had existed between you and Mrs. Armstrong—that is marital difficulties? A. Well, it started about 1940. It started in 1937.

Q. And what were those difficulties? A. That is when I traded part of the Indiana farm for the Goshen farm. Apparently she did not want me to have the farm.

Q. Did it lead to arguments? A. Yes. Mrs. Armstrong nagged me very nearly every night. There were no barns on the farm when I bought it, and of course I was away every day the three seasons I came here. I got up at five and returned at seven at night. I had men there to help build the barns, and not one morning in those three seasons did she get up and make my breakfast. Not one.

Q. That farm was in the joint names? A. I put that in both names, yes.

Q. Now what other difficulties did you have, and when did they occur—marital difficulties? A. Well, we had quarrels since then. Mrs. Armstrong did not want me to invest in stocks. She used to say: "You will be punished for buying stocks, to have as much as you have and want more. You will be punished". Then she would say: "People say that money hungry so-and-so, he ought to lose everything he has got, with a home in Goshen and a home in Florida". But when I asked her who said it she would not tell me.

Q. What was her temperament, her disposition? A. She had a very violent temper.

Q. And would she lose it frequently, or not?

Mr. Sibbald: I object to the cross examination.

The Court: I don't think that is cross examination. Objection overruled.

A. Yes, very frequently. Mrs. Armstrong was one that when someone was there she was very nice to me, but just as soon as they were gone she wasn't.

Q. Tell the court how you provided for your wife from the time you were in Florida up to the time of your last separation, Mr. Armstrong. A. I provided for my wife. I gave her everything she asked for. Not one time she ever asked me for anything that I did not give it to her.

Q. Did you provide clothing for her? A. I provided clothing, and wanted her to buy exclusively with the stores in Miami when they would sell out. They would have half-price sales, and she would not go to those sales. Mrs. Armstrong would not get up to go. I would tell her to get up early and go to those sales and she wouldn't get up.

Q. Was she short of any clothing to your knowledge? A. No, she wasn't. If she was it was her own fault.

Q. To your knowledge did any of her sisters ever contribute clothing for her? A. I think she received a coat with a fur collar on it that one of her sisters gave her. I think it was Mrs. Clancey. She said: "You can use it in the car". And I think a suit that Mrs. Clancey—it was too large or too small for Mrs. Clancey, and Mrs. Armstrong paid her fifteen dollars for it. It may have been a little more than that, but she bought it from her.

Q. Do you know whether Mrs. Armstrong gave her sisters anything? A. I don't think so.

Q. Did you give them anything? A. Any clothing, you mean?

Q. Anything. A. I gave Mrs. Kies a diamond ring, and —a dinner ring I suppose it would be called today, and it is worth $200.

The Court: Again, gentlemen, it seems to me that that has no relevancy to what is here.

Mr. Samuels: May I say, they claim he is a tightwad, and I want to show he was helping her family.

The Court: I don't see the relevancy of that. As I understand this case, on your theory this man and the plaintiff are divorced.

Mr. Samuels: That is correct.

The Court: The plaintiff claims they are not divorced. Even if the court finds they are divorced, she is still entitled to alimony? That is her claim. I can't see for the life of me—there is no cross-petition here on her petition for a divorce, and I don't see the competency of all this testimony about what she is supposed to have done and said at all.

Mr. Samuels: Except as a defense to her claim of divorce.

The Court: I say to you very frankly, if I let you go on it would take a month to try an ordinary divorce case.

Q. I will ask you whether you ever struck your wife? A. I slapped my wife.

Q. When? On one occasion? A. Twice at Goshen.

Q. At Goshen you say? A. Yes.

Q. What was the occasion? A. Well as I say, she was always quarreling, and nagging me, and I will say not only quarreled with me, but the tenants up there; she had the attorney from Batavia come over and tell the tenants to move. She quarreled with the man that—

Mr. Sibbald: I object, on the ground that it is hearsay, and immaterial.

The Court: You may prove anything that this defendant says that the plaintiff did to him, which is in answer to the charges she made against him; but whether other people liked her or not, this court is not concerned with.

Q. I asked you the occasion for it. Did she ever strike you? A. Oh, yes.

Q. On how many occasions? A. Well, I couldn't tell that. She would shake me more than anything else, or hit me with her left elbow; and she would take her hand like this and say, "I'll break your Adam's apple".

Q. Did she ever have a gun? A. She always had a gun. During the day she had a gun in reach, and at night she would strap it on a belt. It was in a holster, and she would strap it on a belt. No one ever came to our house at night that she wasn't in back some place with a gun. She was always expecting robbers, or for us to be robbed.

Q. Did she ever attempt to shoot at you? A. Yes, she did.

Q. When and where? A. One time at Miami, February, 1934.

Q. Did you have a gun? A. Yes, sir, I have several guns.

Q. Did you ever attempt to shoot at her? A. No. If I ever aimed a gun at her as she said in her testimony—I am here—I hope that I am paralyzed before I leave this bench. I never aimed a gun at Mrs. Armstrong at any distance.

Q. When was this that you say she shot at you in Miami? A. That must have been in about 1937 or 1938.

Q. And where was it? A. In Miami, at the Thirty-first street house, in the living room. I was sitting on an antique bench, a Japanese antique bench that I had at the time.

Q. I show you what is marked for identification "B", and ask you to tell the court what that is. A. That is a card showing part of—

Q. It is a photograph of a bench, is it not? A. A photograph of an antique Japanese bench.

Q. And what is that white spot there? A. A piece of cotton I put in the bullet hole.

Q. How did the bullet hole get there? A. Mrs. Armstrong shot a gun, and I was sitting on the bench, but was on the other side. She was close enough—I don't think she really wanted to hit me, as far as that goes.

Q. But she aimed at you? A. She aimed the gun at me. I can't see how she could have missed me if she really wanted to hit me.

Mr. Samuels: I offer this photograph in evidence, may it please the court.

The Court: It will be admitted as Exhibit 11.

Said photograph of bench having been admitted in evidence by the court, was marked Exhibit 11, is heretoattached and made part hereof.

Q. When was your first separation? A. The first separation was in 1946.

Q. And how long did it last? A. That only lasted three or four days. She flew to Miami and called me to meet her, at the airport, that she was coming back.

Q. When did you put the bank accounts in the Cincinnati Bank & Trust Company and the Fifth-Third in Reading, and the bank in Loveland, and the First National in Miami in the joint names of you and your wife? A. Well, the bank at Loveland, that was the bank from the farm. Any money from the farm, the manager that we had would deposit it in the bank. That was in 1937. That was a joint account from the farm up there. In 1945 Mrs. Armstrong kept after me to put the accounts in both names, so that she would not have any trouble or expense with the Government when I died, and in 1945 I put the Cincinnati Bank & Trust Company account in both names.

Q. That was in 1945? A. Yes. I have everything here to show the dates.

Q. How about the First National Bank of Miami? A. That was a small account, and I put it in both names in 1943.

Q. When was your next separation? A. The next separation was in 1948.

Q. Where did it take place? A. Goshen, Ohio.

Q. And tell us the circumstances about it; what brought it about, Mr. Armstrong? A. I was going to a sale the day she left. I got up early, and a neighbor that lives on the farm about five or six miles away was going to call to

take me to the sale. I had an hour or two before I expected him to call, and I went upstairs to lie down, and Mrs. Armstrong came up and she started abusing me. She said I was lazy, up there lying down all the time. In her testimony she said I was the one abusing her, but she came up and began to abuse me. I went to the sale, and when I came back she was gone.

Q. When was this? A. Must have been in June.

Q. What year? A. 1948.

Q. What did you do after she left? A. I stayed on at the farm, and in several days I received a letter from Mr. Sibbald stating that Mrs. Armstrong was in, and that she wanted a property settlement, and that I should come in.

Q. Where did Mrs. Armstrong go, to your knowledge, from the farm? A. I know where she went, because I called her. She went to her sister, Mrs. Clancey.

Q. Where was that? A. On Cappel drive.

Q. Price Hill? A. Yes, sir, Price Hill.

Q. How long did that separation last? A. I suppose that lasted for perhaps three months.

Q. What happened in the meantime with reference to the bank accounts and the safe deposit box and so on? A. When Mrs. Armstrong left she went to the Cincinnati Bank & Trust Company and withdrew from the checking account $10,800; from the safety box $4,800 and from the savings account $700. She withdrew $700 from the Loveland Bank and then she flew to Miami and withdrew $500 from the First National Bank, and everything that was in the safety deposit box, including my stocks. She also took all the deeds, abstracts, insurance papers, all of my keys. I was fortunate enough to have one key, and that is all I have to this day, outside. In

case I lock the door I have one key to get in the house. That was the kitchen door, and that is all the keys I have to the house. I receive premium notices for insurance policies and I don't know what it is for. I pay them, but she has everything, and the deeds to the property. She took everything and made it as hard for me as she could.

Q. Up to this time has she returned any of it? A. No, sir; she has not.

Q. Do you have the originals of these checks? A. I think so.

The Court: What is the purpose of this, Mr. Samuels?

Mr. Samuels: What she has already gotten and still has.

The Court: That is an admitted fact in the case. Why go into all of it?

Mr. Samuels: Are you agreeing to all this, Mr. Sibbald? He may agree to some, Your Honor.

The Court: The court is not going to hear testimony as to what has been agreed to. I have the notes that she withdrew, and she has testified, out of her own mouth that she withdrew $10,800 for which this is the check; she withdrew $500 from the First National Bank in Florida; $700 from Loveland; $787 from a savings account. When these are admitted facts, this court is not going to permit all this time to be wasted.

Q. What is this, Mr. Armstrong? A. That is a check for a thousand dollars that she drew on the Cincinnati Bank when she flew to Miami in 1946.

Mr. Sibbald: I object to it. There is no disputed fact about that. She withdrew it one day and put it back in two or three days.

Mr. Samuels: I offer it in evidence, if the court please.

The Court: As I understand it, every penny of this money was withdrawn from a joint account?

Mr. Samuels: Correct.

The Court: Then what do you claim about it?

Mr. Samuels: And she has it. This one has not been admitted.

Mr. Sibbald: I think we can save a lot of time about that. There is the withdrawal, and there is the deposit.

The Court: I will admit this in evidence as Exhibit 12.

Said check for $1,000 having been admitted in evidence by the court, was marked Exhibit 12, is hereto attached and made a part hereof.

Q. Mr. Armstrong, as to the 1948 affair in Goshen. Mrs. Armstrong testified about having some corrosive sublimate. Will you tell the court about that? A. Mrs. Armstrong used corrosive sublimate on her face once a year, diluted. It removes the skin. Everybody would remark her being in the tropics so long, what happened to her skin. That was the reason. That removed the skin. Mrs. Armstrong mentioned about ants. Anyone that knows anything about acid would know that an ant wouldn't eat acid.

Q. Did you have anything to do with her using that corrosive? A. No. She used it, and it was a little too strong.

Q. How did it affect her, Mr. Armstrong? A. It burned her face.

Q. When you separated, where did she go? A. In 1948?

Q. Yes, at the time of the separation. Did she have any traveling facilities, or did she walk, or how did she go? A. In 1948—that was the day I went to the sale; and we were expecting her sisters out that day, and Mrs. Armstrong had me kill a chicken in the morning, and when I

came home the chicken was there untouched, and Mrs. Armstrong was gone.

Q. Mr. Armstrong, I think at the close of the last session we were asking about the difficulties at Goshen in the end of June or early July 1948. When did you say Mrs. Armstrong left you then? A. Yes.

Q. When? A. The latter part of June, or about the early part of July.

Q. I will ask you whether you had occasion to take her to Doctor Bollak, a dentist? A. Yes, I did.

Q. When was that? A. That was the seventeenth day of June.

Q. While you were still at Goshen? A. While we were still at Goshen.

Q. Will you tell the court what was the occasion of going to see Doctor Pollak or Doctor Holton? A. I think one of her—or perhaps two of her teeth were out of a partial plate that she had. That was the reason that we went. After Doctor Pollak, or one of the doctors there saw she had four or five teeth that were very badly decayed, and she had pyorrhea very bad, they advised her to have them taken out, and instead of having this partial plate fixed, have an entire bottom plate made, and they advised her to go to Doctor Holton and I took her to Doctor Holton.

Q. Then when you and Mrs. Armstrong separated, was there anything you did or any connection you had with this dental work? If so, tell the court what it was. A. No. When she left the dental work, with the exception of perhaps further extraction of some roots that were left in her gums, that she had to go back to Doctor Holton for, had been done. The teeth were out when she left me.

Q. And how long were you separated in 1948? A. Oh, I suppose we were separated—oh, perhaps two months.

Q. And then did you go back together again? A. Yes, I went to Miami, and she came to Miami, and we got together again.

Q. You also filed a suit, through Mr. Conway and Mr. Lacinak, in the latter part of July 1948? A. That was before I went to Miami, and before Mrs. Armstrong came to Miami.

Q. Then when you got back together again, did you and Mrs. Armstrong discuss anything about the stocks, money and jewelry that had been taken out of the box and withdrawn from the joint accounts? A. Yes, we did.

Q. Where did that discussion take place? A. Took place at Miami; and Mrs. Armstrong wanted to be certain that I was dropping the divorce proceedings, and we went to my attorney, Mr. Ward, at Miami. When we entered his office and I introduced Mrs. Armstrong to Mr. Ward, he said: "Mrs. Armstrong, you should not be here without your attorney". He did not know the purpose of our being there at that time.

Q. What if anything was said about the stock, money and jewelry? A. She told me before she went that she was going to put everything back as it was before. We were going to get along. And she told Mr. Ward the same thing.

Q. And you dropped the suit here? A. Yes.

Q. After you got together—when was that, September? A. Yes; it must have been, because Mr. Sibbald was on his vacation, and it wasn't too long after he came back from his vacation. We didn't do anything. I signed an agreement that nothing would be done while he was away.

Q. When did you get back together again? I want you to give some month if you can. After that separation in June or July of 1948 when did you go back together again? A. In September I suppose, the latter part of September or October.

Q. Did you have an occasion to take a trip to Cincinnati or to Goshen at that time? A. Yes. She told me they were going to sell my farm up there. I did not know that the paper I signed with Mr. Lacinak was for a vacation of the farm, and when she told me that I wanted to leave that night, and she said to wait until tomorrow, and we left the next morning.

Q. Did you drive? A. Yes, we drove.

Q. On the way up here did you stop at Asheville? A. Yes, we did.

Q. Will you tell the court about this paper that was offered in evidence, Exhibit 1? I will ask you to look at that and tell the court what it is and how it came to be signed? A. Well, I knew Mr. Armstrong—I was awakened in the middle of the night or early morning, I don't know when, and I asked her what was the trouble, see, and she said "The jewelry". If I remember, I only saw one piece of paper. I never saw this after that night, but I saw photostatic copies, and I said I only saw one, and I can understand now because it was written on both sides. It was only this side I saw, and Mrs. Armstrong dictated this as I wrote it sitting up in bed. I thought we were going to get along, and would have signed anything.

Q. Who dictated the first part? A. She wrote it. I didn't see it, and didn't know there were two sheets until I saw the photostatic copy.

Q. Is that your signature? A. Yes, that is my signature, and that is my handwriting there.

Q. The latter part? A. This here. "I make the above statement". She dictated it and I wrote that sitting up in bed.

Q. Now Mr. Armstrong, this jewelry you spoke of, what kind of jewelry was it? A. Well, it was jewelry worth today between five and six thousand dollars.

Mr. Sibbald: If we are really going to identify any values we should identify them.

Q. Tell the court what it was. A. Well, there were two breastpins, diamond breastpins; there were three ladies watches; there was one carat-and-a-half diamond ring—or it may be a carat-and-three-quarters; there was a dinner ring that belonged to an actress, very fine; there was another ring that was a sapphire and a diamond that Mrs. Moran had pawned with Mr. Richter, and I took it from him and gave her what she asked me, and I paid Mr. Richter. There was a man's ring with a diamond and two sapphires, one on each side. There were several lavalieres and several stickpins—this is one I have on, the other was a pearl. There were eighteen or twenty pieces.

Q. Was any of it Mrs. Armstrong's personal jewelry? A. No, not that. All of that I bought as an investment; and the jewelry that I gave Mrs. Armstrong was not included.

Q. What was the value of the jewelry?

Mr. Sibbald: I object.

The Court: What is the objection?

Mr. Sibbald: I think if he is going to value it he should value it piece by piece.

The Court: Overruled.

A. I didn't mention that there is a diamond wrist watch with a diamond band, and another diamond—

Q. My question was, what was the value? A. Around six thousand dollars.

Q. And where was it kept? A. In the safety deposit box.

Q. Where? A. At Miami, usually. We did bring it up here at times.

Q. And she took that from the box with the other things? A. I am not certain whether she took that from the box down there. She may have had it with her. I am not certain as to that.

Q. You mean when she came here? A. She may have had it with her when she came.

Q. I will ask you whether or not, in driving through the eastern part of Cincinnati, you made any effort to push Mrs. Armstrong out of the machine, or cause her to be thrown out, or anything like that? A. That is a deliberate falsehood.

Mr. Sibbald: I move that thaf answer be stricken, if the court please.

The Court: That will go out, and the witness will answer the question that was asked.

A. No, I did not.

Q. How fast were you going? A. Well, I usually drive forty-to-forty-five miles.

Q. And where was she sitting? A. Next to me.

Q. On the righthand side of the machine? A. She had to be on the right, sitting next to me.

Q. What kind of a machine was it? A. Chevrolet.

Q. One or two doors? A. Two.

Q. And you were driving? A. Yes.

Q. On the occasions that you drove to Cincinnati, I think you testified you brought the monkey along? A. We always brought the monkey, except two years, and we had it for nineteen years.

Q. Was it in a cage? A. Yes, sir.

Q. I will ask you to tell the court whether or not you insisted that she sit in the back seat next to the cage in which the monkey was? A. On that one particular trip, Mrs. Armstrong was in Miami and burglars got in the house, and we were notified at Goshen. She flew to Miami and I went by car, and a neighbor went along with me to assist in driving the car. We brought Mr. Holt back, and he was in the front seat, and she was in the back; and that is the only trip that she ever sat in the back seat. There was plenty of room. She didn't have to be close to the cage of the monkey, because it wasn't near that big. It was a small monkey, and there was a hole—we put a hole in—

Q. Never mind. You say that is the only occasion that she sat in the seat with the monkey? A. That is right, yes, sir.

Q. And how many trips did your make back and forth with the monkey? A. Oh, I suppose we made probably 12, 14, 15 trips.

Q. Where did she sit? A. In the front seat with me. We had the luggage in the back seat.

Q. How long did you remain together after you became reconciled in 1948? A. Until about 1950.

Q. What about 1950; what happened then? A. In 1950 Mrs. Armstrong had me in such a condition that I decided that I had to get away, and I bought a ticket from the

Eastern Air Lines to Louisville. I told her I was going to Louisville and had bought a ticket, and she said what was I going there for. I told her that I had to go some place where I was loved. She kidded me about that, and a little later talked me into taking the ticket back and getting my money. She told me she had decided to give me a key to the safety deposit box, and so I took the ticket back. I wasn't home a half an hour and she said: "What a fool you are. You won't get five bucks. You know I will never give that money back". So I went and repurchased the ticket. That night she talked me into taking it back again, so I took it back. She said we would drive up, and for me to take it back, and we would drive up and she would turn everything back as it was.

Q. Drive up where? A. That we would drive up to Cincinnati. We were in Miami at that time.

Q. Did you drive to Cincinnati then? A. We drove to Cincinnati the next day.

Q. When did you get here—what month in 1950, if you know? A. Well, I think it must have been in the spring because Mrs. Armstrong did not go back with me.

Q. And that resulted in a separation again? A. Yes.

Q. Where did you stay when you came to Cincinnati? A. At the Mariemont Hotel.

Q. In Mariemont? A. Yes.

Q. Tell what occurred there, and what the result was. A. Of course we didn't get along. Mrs. Armstrong was always nagging me, and we would come into Cincinnati to Mills for our dinner. And the Broadway Hotel advertised rooms with a kitchenette, and I wanted Mrs. Armstrong to go into the Broadway with me and hire one of

those rooms with a kitchenette. We were out driving and we got into another argument, and she said: "Give me my clothes". We carried four pieces of luggage, and a small trunk that we kept in the back of the car with clothing, hers and mine that we had over and couldn't put in the luggage. Well, we were on the road and we come to Mariemont. She said: "Stop the car and give me my clothes". I said: "I am going to take you back to Mariemont where we started from". We went back and I stopped in the back and pulled in the parking lot, and I took out her clothes as she demanded, and she hung them on her arm and we went into the hotel. We told the clerk—I told the clerk I was checking out, and Mrs. Armstrong said she was staying. I went upstairs and got my suitcase, a very large one, and the trunk was in the car. Mrs. Armstrong had two suitcases and an overnight case, but she had this extra clothing that I took from the trunk, that she did not have a suitcase for. I went to Louisville—

Q. What happened to her clothes? Did they remain there? A. No, she took them. She had them, and took them in the hotel and up to her room.

Q. And she had the suitcases in the room? A. Oh, yes.

Q. What did you do? A. I went to Louisville to my aunt's home; and I couldn't sleep, and got up about four o'clock in the morning and told my aunt I was leaving—

Mr. Sibbald: I object.

Mr. Samuels: Never mind.

Q. What did you do? A. I came back the next morning to Cincinnati, and called her up at Mariemont.

Q. Was she there? A. Yes.

Q. What was said and done? A. I said I was coming out, and she hung up on me. I went out, and when I got

there two of her sisters were there with another suitcase for this extra clothing.

Q. What did you do after that? A. Oh, I tried to persuade her to come home to Miami with me; and her sister, Mrs. Clancey, said: "Don't bother now. Come to the house tomorrow morning and she will be over this", or something like that, "and everything will be all right". So I stopped out on Harrison avenue at a tourist court that night, and the next morning I went to Mrs. Clancey's house on Cappel drive, and Mrs. Armstrong laughed at me, and went upstairs and left me sitting there in the kitchen. I left, and drove back to Miami by myself. I was in no condition to go back at that time.

Q. Did she go to Miami during the summer of 1950? A. Yes, she did.

Q. Where did you meet her? A. I was going to town on a Friday night, I am quite certain, and saw her standing in an arcade. I did not know she was in Miami. That is the third time she came to Miami and stopped at the hotel without coming home. I talked to her, and tried to persuade her to come home; and she would always laugh and say: "You won't get five bucks". There was a group of people around snickering, and I walked up the street and she followed me. I had the car parked several squares from there. I drove home and retired, and Mrs. Armstrong left and went back to the hotel; but before she left she told me she was leaving the next night at eight o'clock. About seven o'clock I went down to the station and when she came I persuaded her to come home. I told her I had about fifteen hundred dollars in travelers' checks, and we would take a trip to Jamaica or any place she wanted to go. We took the trip to Jamaica and four or five other places—

Q. How long were you gone? A. About three weeks.

Q. When was that, as near as you can say? A. I am positive that was in the latter part of September.

Q. 1950? A. Yes; from the fifteenth of September on.

Q. And when you came back, where did you go? A. While we were on that trip I was very ill. The last stop we made was at Nassau, and I was very ill there. In about two weeks Mrs. Armstrong left me after we came home. I was not fully recovered. I had gone to the doctor—he has a record of that of course.

Q. You went back to Miami then, did you? A. Oh, yes.

Q. How long did you live in Miami after that trip? How long did you stay together? A. Between two and three weeks.

Q. What happened then? A. I didn't know that she was thinking about leaving until the mailman came and asked for a letter that he left the day before. I told him I had given it to Mrs. Armstrong. He came to the back of the house, the back door, and he said—

Mr. Sibbald: Objection.

Q. Was Mrs. Armstrong there? A. Yes, Mrs. Armstrong was there. He said Mrs. Armstrong has left a notice—

Mr. Sibbald: I object, may it please the court.

The Court: What is the competency of that?

Mr. Samuels: That she had already told the mailman to forward mail to Cincinnati, and then stayed on a day or two.

The Court: This is some more irrelevant and incompetent matter such as has been offered again and again. Objection is sustained.

Q. When did she leave? A. She did not leave that night, or the next as she intended. Mr. Lupton, one of our

friends down there called over and said he was taking a cruise up the waterway, and stopping at Fort Lauderdale for dinner, and would like us to go along. I said I would tell Mrs. Armstrong, and she told me she was leaving; and I left and went out in the yard, and in about fifteen minutes she called and said did I tell him we were not going, so she said we would go, and so we took the cruise.

Q. What day of the week was that—was it Sunday? A. Yes.

Q. Just for the day? A. Yes.

Q. When did she leave with reference to the cruise? A. She left Monday night.

Q. Did she take any clothes with her? A. All I saw was an overnight case, but I knew she had clothes up here, because she only brought one suitcase down, and she left with one overnight case that I saw. Several days after that I looked for my suitcase and it was gone, and I looked for her suitcase and it was gone. She took it out at the same time, I don't know when.

Q. Was that the last separation, Mr. Armstrong? A. That was the last separation.

Q. That was on Monday, the day after this Sunday? A. Yes.

Q. And you have been separated ever since? A. Yes.

Q. And then you brought a suit in Florida? A. Yes.

Q. Mr. Armstrong, I forgot to ask you about this lease on Clark street. Did you, or Mrs. Armstrong, or both of you negotiate that lease with Doctor Kolb?

Mr. Sibbald: I object to the form of that question.

The Court: Objection sustained.

Q. Mr. Armstrong, the place where Mr. Adrian now is and has his carriage store; I will ask you whether or not

you had a lease on the place in 1923 or 1924? A. A written agreement was what it was.

Q. With whom? A. Doctor Kolb?

Q. Doctor Kolb? A. Doctor Kolb.

Q. Who negotiated it? A. I did.

Q. In whose name was it? A. My name.

Q. Did Mr. Armstrong have anything to do with it? A. No, she did not.

Q. Is that the agreement you turned over to Mr. Adrian? A. I don't know whether I turned that over to Mr. Adrian or not. I made arrangements with Doctor Kolb that Mr. Adrian was taking it over.

Q. Now Mr. Armstrong, when you came to Ohio, either Cincinnati or Goshen, after you had moved to Florida, how long would you stay at Goshen or Cincinnati? A. We usually left Miami the middle of June and sometimes we would leave here the latter part of October, and very seldom in September. The water and electric light bills at the Florida Power & Light Company will verify that.

Mr. Sibbald: I move that that go out, if the court please.

The Court: That will go out.

Q. What was your purpose in coming to Goshen? A. I had a farm there.

Q. And you looked after it? A. Yes, sir.

Q. Otherwise, you lived in Miami? A. Miami was our home.

Q. Where did Mrs. Armstrong vote, do you know? A. She voted in Miami.

Q. Mr. Armstrong, since this suit was filed over a year ago, have you received any dividends on General Motors stock? A. No, I have not, not in 1952 or '53.

Q. And those are four dollars a share on the new stock? A. That's right.

Q. So nine thousand of dividends was tied up? A. Yes, sir.

Q. What others are tied up? A. The dividends at the North American Aviation.

Q. No dividends since the suit was filed fourteen months ago? A. No, I have not.

Q. How much a share? A. $1.25 a share.

Q. How many shares have you? A. 560 shares.

Q. What does that amount to? A. $875.25 easy.

Q. Any other dividends tied up? A. No, sir, that is all.

Q. The accumulation of the estate that you have is in part due to your trading in stocks, is it not? A. Yes, sir, it is.

Q. Will you tell the court what trades—

The Court: I am not concerned with them, and don't want to hear about them.

Q. You were asked about this monkey. Did Mrs. Armstrong object to the monkey? A. No, sir. I wanted the monkey put to sleep, destroyed; and she would not hear to it. She said: "We will never get rid of Joe". That is what she said. She was with the monkey more than I was.

Q. Who was Joe? A. The monkey.

Q. There was some testimony about a telephone; did you have a telephone in Miami? A. No, I did not.

Q. Why, Mr. Armstrong? A. Mrs. Armstrong told everyone that was surprised when we didn't have one, that telephones made her nervous, and she would not have one.

Q. Did you object to having one? A. No, I did not. I wanted a telephone, because I would have to use the neighbors' phone and did not want to do that.

Q. From 1928 you were virtually retired except for some minor trading; is that right? A. That is right.

Q. I will ask you whether you helped with the housework in Miami? A. I done as much as Mrs. Armstrong did of the housework. I done the laundry, and asked her to hang it out. I didn't want the neighbors to see me. She objected, although she did hang it out. And I done all the shopping.

Mr. Samuels: I think you may cross examine.

Cross Examination

By Mr. Sibbald:

Q. What other work have you done besides the automobile repairs, rubber tires and such as that? A. Well, I suppose I am a farmer; I farm.

Q. What did you do before you went down to Stabler street, aside from working with your father? A. I used to buy and sell unclaimed freight, and attended all the big sales.

Q. Before that what did you do? A. Before that I went to school.

Q. Didn't you have some training on the stage? A. I took a season on the stage, yes. I wanted to get into the show business, or I thought I would like to. Harry Quitman was one of the cast. We put shows on.

Q. Was it only in Cincinnati? A. No. I went to New York.

Q. When was that? A. That was in 1909.

Q. And what did you do in New York? A. I got a position in a chorus called the "Golden Butterfly". We played at the Grand here for a week. It was a circuit.

Q. How long did you stay in that work? A. Just one season.

Q. Now when you left your father in 1914, did you have— A. I left my father in 1911, not 1914.

Q. What did you do then between the time you left your father in 1911 and the time you went to Stabler street? A. I went from my father to Stabler street. I had that. I rented it when I came back from this show business you are talking about in 1910. The season in the show business was 1909-1910 and I came back here in the spring of 1910 and rented the Harris Planing Mill Company.

Q. At that time, in 1911 as you say that you went to Stabler street, had you saved any money? A. Yes, I did.

Q. Where did you keep it? A. When I went to Stabler street I kept it in—there was a chimney there that was very wide, and that was my bank. I dropped a metal box in it, and took out two or three bricks, at one side, and threw them on the box. I had wheels stuck up there that I used.

Q. Did you about that time go over to the race track at Latonia? A. I went over to Latonia when I was with my father. I had race horses.

Q. Well now Mr. Armstrong, you remember I took your deposition? A. That's right, yes, sir, I remember that all right.

Q. In Mr. Samuels' office on October 18, 1951? A. I understand.

Q. And I asked you where you kept the money you had saved, didn't I? And you answered that your bank was in the chimney? A. That's right.

Q. And did I ask you: "Did you, about that time, go over to the race track at Latonia?" and you answered "Yes, I did"? A. I went there, and it could have been about that time or a little before, yes. About that time.

Q. Did you make the answer to the question I read? A. If it is in the deposition I did, yes, and it is the truth.

Q. Did I then ask you: "Did you lose any money over there?" A. Yes, you did.

Q. And you answered: "I lost between two and three thousand dollars"? A. It was closer to three than two.

Q. Now what did you take in the Stabler street property when you opened there? A. When I left in 1909 to go to New York, I had—

Q. I am not asking you that. A. That is what I took to Stabler street.

Q. What did you move into Stabler street when you rented it? A. The rubber tired machine that I had with my father; four or five buggies; some harness; some wheels; some axles and shafts, and everything to make up buggies. I put them together and had them painted. I did not do the painting.

Q. Now did Mrs. Armstrong give you anything about that time? A. I gave Mrs. Armstrong a diamond ring, and—

Q. Did you understand the question? Did Mrs. Armstrong give you anything about that time? A. At that time no, she did not.

The Court: When you ask the witness a question let him answer, and if the answer is not responsive you can move to strike it out.

Q. Mr. Armstrong, did Mary Donovan, while you were on Stabler street, give you a diamond ring? A. Yes, she did; a diamond ring that I had given her.

Q. And what did you do with that ring? A. I traded it to Lou Bauer for an automobile, a Cino.

Q. And what did you do with it? A. Sold it.

Q. What did you do with the proceeds of sale? A. I kept them. I bought a diamond ring from my brother and gave it to her, and kept the balance.

Q. Did you put any of it in the business? A. I lived on it. It may have went into the business, yes. It went in the chimney with the rest of the money.

Q. Now when was it that you made your deal with Mr. Shaffer to move to 315 Clark street? A. I made that deal—I met Mr. Shaffer years and years before that, years before, but I made the deal in 1917.

Q. And you stayed there until 1923? A. Yes, sir, that's right.

Q. Now Mr. Armstrong, when you left there in 1923 or 1924, what had you accumulated? A. I had accumulated in all about $35,000. That included the General Motors stock—that included everything, any cash and everything I had.

Q. Aside from the General Motors stock what had you accumulated? A. Well, I had about $17,000 in cash; had those lots in Woodlawn—

Q. What lots in Woodlawn did you have? A. The Woodlawn Terrace and Woodlawn Addition.

Q. Well, how many lots did you have at that time? A. It was a farm, and had been subdivided into 550 lots.

Q. How many did you have? A. The Woodlawn Terrace—I gave my father and the rest of my brothers did, a power of attorney. There was 350 lots in that. The addition we divided and I received 87 lots.

Q. When did you receive them? A. I received in 19—it must have been in the '40s, or perhaps the late '30s, but I think it was in the '40s. I am not certain. It was all together and we left it that way until that time.

Q. Then when you went to Florida, you and Mrs. Armstrong, in 1923 or '24, you had some $17,000 in cash and this General Motors stock? A. No, I don't think—I had a mortgage on that place. I don't think it was paid off before we went to Florida. I sold the building for $20,000 and took back a mortgage and I don't think that mortgage was paid off.

Q. Well now, when you refer to $17,000 cash, did that include the mortgage? A. Yes. I had about $35,000—not enough to retire on. I expected to go in business with Mr. Shaffer.

Q. You had $17,000 in cash, and the General Motors stock was worth $17,000? A. I don't know what that General Motors stock was worth in 1923. I didn't look it up.

Q. Why do you say you had $35,000? A. Because that is what I figured at that time, and that was in my head, and will always be in my head that I had when I left; and I told people here I was worth $35,000. What General Motor stock sold at at that one particular tim I don't know.

Q. Aside from the cash and General Motors stock, you had 90 acres of land on the Isle of Pines, did you not? A. That's right; worth $900.

Q. When you left the Isle of Pines how much had you accumulated in the way of cash and securities? A. I didn't secure—I had the General Motors stock. If they paid a stock dividend I had that; but I did not buy any stocks until I came back to Florida.

Q. Well, had you increased your cash or mortgage property? A. Oh yes. I made money on the Isle of Pines, some, and had a little property that cost me very little, and I done very well on that later.

Q. Well, my question is, how much had you increased your available cash by the time you left the Isle of Pines? A. I will say about a thousand dollars.

Q. So that when you returned to Florida you had somewhere in the neighborhood of sixteen to eighteen thousand dollars either in cash or mortgages, and the General Motors stock? A. That's right.

Q. And it was with that capital that you began to trade in the stock market? A. That's right.

Q. How did you become indebted to the Brotherhood Bank? A. I bought stocks on margin; needed the money.

Q. You borrowed the money from the Brotherhood Bank? A. Oh yes.

Q. And what did you give as security when you borrowed the money? A. 1125 share General Motors stock.

Q. And were you subsequently called upon to give an additional security to the bank? A. Yes sir, three times.

Q. And what did you give those times? A. I gave—I put up the 1100 shares General Aviation I had, and a lot on Stabler street that I gave to Mrs. Armstrong's sister, and my—that was later—and my father put up the entire subdivision at Woodlawn. They were determined to sell me out. I made three trips from Miami in one month. I put up something and they said everything was all right. I went back and they sent me a telegram they had a director's meeting and wanted me to pay off the loan. I came back here again and my father put up the entire subdivision at Woodlawn. That is recorded at the Court House. He did that to save my General Motors stock.

Q. Isn't it a fact, Mr. Armstrong, that the mortgage you are talking about being recorded here in the court house

was a mortgage on your 80 lots? A. No, it was not; positively.

Q. If I were to say to you, sir, that the mortgage in book 159, page 468 from yourself to The Central Trust Company, was on lots from 257 to 291, and 318 to 364, would you still make the answer that that was not— A. This is the first time I knew of it. I thought it was the entire subdivision. If it is in there it is right, but this is the first time I knew it. I was in such a state then that I did not know; but I know my father came down there and if he only put up them, I didn't know it.

Q. Isn't it a fact it was not your father or brothers who were putting it up, but that you gotten your father and your brothers to deed those lots to you by a deed dated April 20, 1932? A. That is possible.

Q. And recorded in Deed Book 1610, page 585? A. That is possible.

Q. For your share of the lots? A. They may have done that, but I didn't know it.

Q. After you have that security to The Central Trust Company what other collateral were you called upon to put up? A. None with The Central Trust Company.

Q. Were you called upon to put collateral any place else? A. With W. E. Hutton.

Q. And what did you put up? A. Oh, I can't recall. I have a statement here if I can show it. That would give a better idea.

Q. I am asking you. A. I couldn't tell you.

The Court: He may refer to any statement that will refresh his recollection.

A. (Continued) Well, to begin with—

Q. Let me see what you have there. A. Instead of 200 shares you will notice it is 175 shares of General Motors.

Q. Well now, what are you referring to? A. If you notice in the one, there was 200 shares of General Motors —that is what you are going to bring out about this 200 shares, so I am telling you that there were only 175 shares a little later on.

Q. Let's clarify that. What you mean is that Mrs. Armstrong went to her brother-in-law Tom Jackson, and got him to give you some General Motors stock to bolster your account with Hutton? A. Yes sir, that's right. Tom Jackson put up 200, and I had 300 of Briggs, 200 Eaton, and 200 Murray. The loan was $2,400.

Q. Have you any other statement from Hutton? A. Yes, sir.

Mr. Samuels: May we have them marked for identification?

The Court: No.

Q. Are these statements of your account with Hutton at that time? A. Yes, sir.

The Court: You asked the man a question and he said he could not answer without referring to a memorandum, and when he referred to it you took it away from him. Now you are attempting to have it marked.

Mr. Sibbald: I assume if he has a piece of paper in his possession I can ask him to identify it.

The Court: The court has ruled, Mr. Sibbald.

Q. Well, Mr. Armstrong, on these statements how many shares of General Motors were up at Hutton's during the time that account was running? A. In the beginning 200, with what I had up.

Q. And what else was put up? A. I just read this—Briggs, Eaton, Murray, Standard Brands, for twenty-six hundred.

Q. And were those the only shares you had up at Hutton's during that time? A. That is all, yes. These are the statements to verify it.

Q. And did you at that time go broke? A. If I wasn't broke I wouldn't have borrowed the money.

Q. Well, did you borrow money? A. I borrowed $15,000 from the Brotherhood and Central Trust took it over and if I had the cash I would have paid for these and not had them on margin.

Q. Where did you put that fifteen thousand—into the Hutton account? A. I put that—no. I borrowed that from the Central Trust Company. No. I bought thousands of shares. I have them here. I can show you where—I could show you something that would surprise you.

The Court: I am not concerned with all this, that I know of.

A. (Continued) No. I have bought thousands of shares. This is just a few.

Q. Mr. Armstrong, in addition to borrowing $15,000 at the Brotherhood Bank were any other loans made besides the loan on the Tom Jackson General Motors— A. If you refer to the $2,000 I borrowed from Fred Beers in Miami. Mrs. Armstrong had nothing to do with it. I met him down town. I was coming up to Cincinnati; but that was before the $15,000 loan.

The Court: Will you kindly inform the court as to what relevancy it has to the matter before me?

Mr. Sibbald: The answer as it stands has nothing. If she had assisted him it would have a bearing.

The Court: I don't think so. I don't see how.

Q. In any event Mr. Armstrong, the Brotherhood loan was paid off and the mortgage cancelled in July 1933, was it not? A. No. It was in this way: Westheimer Company, and I was a big creditor there, and they took over that loan for me.

Q. Including your 1125 shares General Motors, you still had when you and Mrs. Armstrong finally separated, being the same stock that was in her possession at the time? A. Yes; but I bought and sold 500 shares in 1933. I had to. Westheimer didn't want an inactive account, and the only way they would hold it was for me to sell 500 shares, and I sold it; thought I would leave the money there and buy it back, and Mr. Westheimer agreed to it, and I have it here to show if you want to see it.

The Court: I want counsel on both sides to tell this court what you consider to be the issues here.

Mr. Sibbald: As far as these questions are concerned, they are only a matter of division of property as between those two parties.

The Court: I still don't see that that has any relevancy. Your claim is that this lady is entitled to a divorce. Your claim further is, as I take it, as your pleading sets forth, that she is entitled to alimony.

Mr. Sibbald: That is right.

The Court: Regardless of whether she is entitled to a divorce or not?

Mr. Sibbald: That is right.

The Court: How can the fact that this man over the years bought and sold stock have any bearing on whether she is entitled to a divorce?

Mr. Sibbald: Not as to whether she is entitled to a divorce. It is on the division of property, and on that it does have a bearing may it please the court.

The Court: On the basis of alimony, the only thing the court can be concerned with is what is the worth of this man at this time, when the prayer for alimony is before the court. Not what he was worth in 1932 or 1933, or 1929.

Mr. Sibbald: Except as to who may have taken part in accumulating the property.

The Court: I don't think that is important.

Mr. Sibbald: I thought it was. If your Honor thinks not, very well.

The Court: I think that a woman who lives with a man over a period of years, and keeps his house and takes care of his home, is entitled to consideration whether she ever did one thing in the way of producing financial aid or not.

Mr. Sibbald: I am thoroughly in accord with Your Honor's thinking, but I think in order to arrive at a correct consideration, if she did of her own efforts help to accumulate it, Your Honor should be advised of it.

The Court: I wish you would conduct your examination with the thought of the court in mind.

Q. You said the other day that you slapped your wife twice at Goshen? A. That's right.

Q. When were those times, Mr. Armstrong? A. One time was—I was in bed and she called me filthy names, and said I was like a worm that crawled on its belly. She said: "You are all crazy; your niece takes fits." And that is when I slapped her.

Q. I asked you when it was. A. That was in the latter part of June, or the first of July of 1948.

Q. When was the other time? A. The other time was when she was fighting with the tenant and I asked her—I was ashamed of myself and of her, and she was not getting the best of that. She had her match. And I asked her to come with me in the car; and I drove her—

Mr. Sibbald: I ask that that go out, if the court please. Your Honor suggested that I ask a question, and if the answer was not responsive I could move to strike it.

The Court: That may go out, and the witness can answer when it was as he remembers the time. A. When she threw a saucepan of boiling hot water on me, that was the time. know, do you not, that she put it back in the bank? A. That was in 1946; before she withdrew the thousand dollars in 1946 and flew to Miami.

Q. Now with reference to that thousand dollars, you know, do you not, that she put it gack in the bank? A. She told me that; but I also know you can't fly to Miami and live at a hotel and not spend money.

Q. Again I ask you: Don't you know that she put that thousand dollars back in bank? A. No, I don't. She told me that she did. That is the way I know she did, the only way I know she did.

Q. You were getting statements from your bank at all times were you not? A. I was.

Q. You can read a bank statement can't you? A. Just about as well as you.

Q. The sheet that Miss Reed has marked identification "L", will you look at it and I will ask you if you refer to the item that was withdrawn on September 12, 1946 of a thousand dollars—do you find that? A. That's right. It says September 12, 1946, $1,000.

Q. I will ask you sir, if there was not, on the nineteenth of September 1946, a thousand dollars deposited in that account? A. That is possible. I might have deposited a thousand dollars. Was she up here or in Miami? How long did she stay?

Q. I am asking if there is not an item of a thousand dollars deposited on that date? A. That's right. And there is more than that. There is $2,000 right under that. I might have deposited that.

Q. Look at that $2,000 deposited. What was the date of it? A. September 26, 1946.

Q. I will ask you if that is not the $2,000 that you collected on the sale of the property in Newport that was in the joint names? A. It very likely was.

Q. Did I understand you to say the other day, that last day we were here, that of these moneys that Mrs. Armstrong drew out of the bank accounts in June or early July 1948 that she had returned none of it? A. It was July, not June. That is positive. It was July she withdrew it.

Q. Did I understand you to say she had returned none of it? A. No, I never made that statement to you or to anybody else.

Q. How much did she return? A. To my knowledge she returned $5,000.

Q. And how did she return that? A. She put $200 in the Fifth-Third Bank at Reading, Ohio; $2,000 at the First National where I had an account. She took the money and then put it back, $2,000; and $1,500 to pay my attorney.

Q. Now when was that done? A. That was done—I don't know—I imagine we went back together—that must have been in the latter part of 1948.

Q. And you say it was $200 she put in a Reading Bank? A. $2,000. I said it was $5,000 all told. You got it $200.

The Court: Don't argue. You did say two hundred; it may have been a slip of the tongue.

Q. There was an agreement between the two of you to open this account at the Fifth-Third at Lockland, wasn't there? A. Yes, there was an agreement between us.

Q. And the two of you went out to open it together? A. Yes; I had no money, she had all the money.

Q. We will come to that in a minute. Let's confine your answers to the Lockland situation. She put $2,000 in the account to open an account? A. That's right.

Q. And she also put in $1,500 to pay Mr. Howard, who in turn was paying Mr. Lacinak? A. That's right.

Q. You knew also that she was paying $1,500 to me? A. She said so, but I couldn't hardly believe it.

Q. Do you believe it now? A. Yes, I do.

Q. At about that time you closed the account, the two of you had in the Cincinnati Bank & Trust Company did you not? A. Yes, I did.

Q. Did you reopen an account there? A. Yes, I did.

Q. Can you tell us when that was? A. I reopened the account when I found out that Mrs. Armstrong was determined to leave me, and was not going to put back any money; then I reopened the account in my name only.

Q. And it was in that account at the Cincinnati Bank & Trust Company that you opened in your own name, that you subsequently deposited the dividends that you received on the General Motors stock? A. They were paid to the Cincinnati Bank for years and years.

Q. Have you withdrawn those dividends from the Cincinnati Bank? A. They were stopped. I haven't received

any money for over a year. I have borrowed money to live on.

Q. How much did you receive in the way of dividends in 1949? A. That I really do not know. I could not be certain. You have it there I think. I really could not recall offhand.

Q. Mr. Armstrong, I show you the paper marked for identification "M", and ask you if that is a photostatic copy of your income tax return, you and Mrs. Armstrong, for the year 1949? A. I suppose so. I think it must be.

Q. During 1949 what bank accounts did you have besides the Cincinnati Bank & Trust Company and the First National Bank of Miami? A. I had the joint account at the Lockland Ohio bank.

Q. Is that all? A. I am not finished.

Q. Now sir, if you received in 1949 $11,292 in dividends, will you tell us where they were deposited, what bank? A. I think that Mrs. Armstrong had her attorney Mr. Sibbald write to General Motors and hold up the dividends, and I did not receive them for several quarters, and when I did, the check came to me and I cashed the check. I was in debt, and I cashed the check and paid my debts.

Q. I show you the sheet of a bank account marked for identification "N", and ask you if the item deposited on July 12, 1949 of $1,406.25 was not a dividend on the General Motors stock? A. Oh, no. I never received a dividend that small.

Q. $1,406.25? A. Fourteen hundred?

Q. Yes. A. No. Well, it might have been one quarter, at that, but I thought they were more. That may have been a quarter—yes, that was a quarter—$1,406.25, I can see it here.

Q. Then sir, I ask you if under date of September 12, 1949, you received another dividend in the same amount, $1,406.25? A. Yes, sir, that is the next quarter.

Q. I will ask you if, on December 12, 1949, you did not receive on the General Motors stock $4,781.25? A. Yes; they paid an extra dividend.

Q. Those three were deposited in the Cincinnati Bank & Trust Company were they not? A. That's right.

Q. Where was the dividend prior to that? The dividend in the spring, the one customarily paid in March—where was that deposited? A. It was to be deposited in the Cincinnati Bank, unless that was the time the dividend was held up. Now that four thousand may have been that—

Q. Well, that four thousand was a dividend of $4.25, was it not? A. Yes.

Q. Per share? A. That must have been an extra dividend then.

Q. If those three dividends, two of them of $1,406.25, each, and one of $4,781.25 were the only dividends deposited in the Cincinnati Bank, where did you deposit the balance of your dividends making up $14,292 that you returned on your income tax return? A. The rest of the dividends were small, they came in maybe a hundred or two hundred at a time and I cashed those to live on.

Q. You mean the difference between these three items? A. No. There were four quarterly dividends in a year. They pay every three months, and three times four is twelve.

Q. Now Mr. Armstrong, I show you this Ray and Mary Armstrong account in the First National Bank of Miami, marked for identification "O" and refer you to the sheets covering your account for the months of February, March

and April, and ask you if you find any place in those months where you deposited a dividend from General Motors? A. I never did receive a dividend in February, from General Motors or nobody else.

Q. Then from what companies did you receive the dividends that go to make up this $11,292 that you returned as dividends collected in your 1949 income tax return? A. Mrs. Armstrong can tell you better than me. She has the stock certificates.

Q. You collected the dividends. A. That was in my name, and my stocks, and came to me.

Q. I am asking—you have three dividends you deposited in bank from General Motors. From what companies did you get the dividends representing the difference between those three items of General Motors, and the $11,292? A. You haven't got all the Cincinnati Bank, because there were four dividends paid, because General Motors paid four dividends, and the dividends came to the Cincinnati Bank. I never received them for years—I will say for fifteen years—longer than that. The four dividends had to come to the Cincinnati Bank. I didn't receive them, to my knowledge.

Q. Mr. Armstrong, I will show you a statement or ledger sheet of the Cincinnati Bank & Trust Company of the account of Ray and Mary Armstrong for the years 1947, through and until February 22, 1949, marked for identification "P". That was your account, was it not? A. Yes, sir.

Q. Will you tell me if you find, in 1949 and before that account was closed out, any dividend received by you from General Motors or from any other company in the year 1949? A. Well, we have—no, this is 1947-'48. Here is the

dividends. There is only February 22, 1949 on this, and that is $3.60.

Q. And on that day you closed out the account, did you not? A. If you have it there. I don't really know.

Q. You had a balance of $64.61? A. Mrs. Armstrong took every cent but that, yes, sir.

Q. When you opened your account in your name at the Cincinnati Bank & Trust Company July 12, 1949, your first deposit was a dividend from General Motors, wasn't it? A. That's right.

Q. Now between January 1, 1949 and the dividend of July 12, 1949, what dividends did you receive, and what did you do with them? A. Well, I had 350 shares of Hudson Motor Car Company, that I received dividends on. They didn't pay very much. I cashed that to live on. I received dividends on 250 shares of Standard Brands, and cashed that to live on. I had to live, and pay taxes and so on. I had dividends on 300 shares of Murray Manufacturing Company. I cashed that. They didn't amount to too much to live and and pay my expenses. And I think North American Aviation paid one dividend that year if I am not mistaken.

Q. Now Mr. Armstrong, the three dividends that you did bank totaled $7,593 in round figures? A. That's right.

Q. Did these other stocks pay dividends amounting to $3,700? A. No. I am trying to tell you, there are four dividends in a year from General Motors, and you are trying to make the court believe—

Q. If there was a fourth, what did you do with it? A. Used it to pay taxes. I think I paid around three thousand or thirty-two hundred income tax in 1949. I have cancelled checks to show just where the money did go, and how

little in reality did go for me in comparison with what I received.

Q. Now Mr. Armstrong, referring again to this ledger sheet marked for identification "N", on February 21, 1950, you withdrew a thousand dollars from the Cincinnati Bank & Trust Company; on February 27, 1950, $2,000; on March 1, 1950, $1,062.88. What did you do with that money? A. What was it? Tell me the months again, please.

Q. In the months of February and March, a total of $4,062.88. A. If you will look on this Miami Bank account you will find that I gave them a check, and it is on here. Positively, because I was not in Cincinnati. I checked it out of there for taxes and so on.

Q. Now, referring, sir, to the First National Bank of Miami account in the name of Ray and Mary R. Armstrong, for the months of February, March and April. I will ask you to look at that, and tell us whether you find deposits for this $4,062.88. A. Well, on February 17—what have you got here—1950 a thousand dollars. What are you giving me?

Q. I am asking you, sir, about three withdrawals from the Cincinnati Bank & Trust Company in the months of February 21 and 27, and March 1, 1950. A. February 17, deposited $1,000 in the First National Bank at Miami, and deposited $500 on March 17, 1950.

Q. These items I am asking about, Mr. Armstrong, are February 21, February 27 and March 1. A. Well, they are not here. Deposits were—unless they made a mistake. They have February 17, $1,000.

Mr. Schwartz: If the court please, we are getting into a hopeless mess on something entirely irrelevant. I object,

on the ground that he is asking about deposits in 1950 when we are talking about 1949.

The Court: The court has attempted to indicate several times. As I said to you gentlemen, the question I have to determine first is, whether or not Mrs. Armstrong is entitled to a divorce; secondly, whether she is or not, is she entitled to alimony, and if so in what amount. I am not concerned about what went on in the way of deposits, transfers and so on over the years. I am interested, and have heard very little about it up to now, as to what this man's worth is as of today.

Mr. Sibbald: That is the only reason I am asking these questions, as to whether he has made a disclosure to the court, and to me, or to his own lawyers, and whether I can find out in his bank transactions anything that shows where the money has gone that has come into his possession in the last two or three years. I started with February of 1950, but I want to go through 1951, and as far as I can go, as far as I have the figures. This is just one of a series of questions.

The Court: Objection sustained.

Mr. Sibbald: I don't want to appear to be running contrary to Your Honor's ruling, but I would like to ask as to certain withdrawals from the Cincinnati Bank in the month of September of 1950 and ask what he did with that money.

Mr. Schwartz: The same objection, may it please the court.

The Court: Same ruling. If you desire, I will let you put the question for the purpose of making a record.

Mr. Sibbald: I hope Your Honor will let me offer the statements later, which will show the transactions I am talking about.

Q. Now Mr. Armstrong, on the bank account of Ray and Mary Armstrong in the First National Bank of Miami, I call your attention to a withdrawal on April 6, 1951, of $3,280.30, and I will ask you to whom was that amount paid?

Mr. Schwartz: Same objection, Your Honor please.

The Court: What is the purpose of that, Mr. Sibbald?

Mr. Sibbald: I want to know whether he withdrew it for his own use, or has it in his possession, or what he did with it, as bearing on what he has now.

The Court: Objection sustained.

Mr. Sibbald: Exception.

Q. Mr. Armstrong, subsequently you opened an account in the First National Bank of Miami in your own name, did you not? A. That's right.

Q. Now on the twenty-second day of December 1952 what did you have in that account? A. I really don't know. I sent my statements up here. These are my statements, and I sent them up here. What date did you say?

Q. December 22, 1952. A. $2,656.20.

Q. Is that still in the First National Bank at Miami? A. There may have been some withdrawals, but it is still in there—that is with the exception of what I used for different purposes.

Q. Now, Mr. Armstrong, you assigned your election to purchase or to take the appraised value of these properties that were in partition, didn't you? A. I had my aunt buy them for me. I told her that this would be settled up in a month or two. I asked this aunt and uncle in Louisville to buy the farm for me, that I did not want any more expense. I had too much in the farm; I built the barns, and wanted the farm, and asked them to buy it in at the full

appraised value, and then came to Miami with the money for me. I wrote them how much it was, and they came to Miami to give me the money, and they bought it and it is in their names, and I am going to take it off their hands just as soon as I possibly can.

Q. Isn't it a fact that these amounts you withdrew from the Cincinnati Bank & Trust Company of Cincinnati and from the two accounts in the First National Bank of Miami are money you accumulated and turned over to your aunt to exercise that purchase? A. No sir. Here is a cancelled check for $3,280.30, dated March—

Mr. Sibbald: That is not responsive if court please. Will Your Honor direct the witness.

The Court: You asked about an item of an exact amount, and what he had done with it. I sustained an objection and you excepted to the ruling. Now the man wants to voluntarily answer and you object again.

Mr. Sibbald: I am talking about a series of items.

Q. (Read by the reporter): "Isn't it a fact that these amounts you withdrew from the Cincinnati Bank & Trust Company of Cincinnati and from the two accounts in the First National Bank of Miami, are money you accumulated and turned over to your aunt to exercise that purchase?" A. No, it is not.

Q. Mr. Armstrong, you are still living in this house in Miami? A. I am.

Q. And you say it is worth about $20,000? A. I said $18,000.

Q. How is it furnished now? A. Furnished very nicely; I bought some good furniture.

Q. Well, will you describe its furnishings, beyond saying it is very nice? A. Well, there is a tax down there, an

intangible and tangible tax, and I would put in the furniture at $1,500, and Mrs. Armstrong objected very strenuously every year. She said: "You couldn't get that for it at auction, and nobody else would put it in that high." I said: "Would you sell it for that" "You couldn't get it at auction," she would say.

Q. Are you putting that value of $1,500 on it? A. No; I am not.

Q. What do you say is the value of the furniture? A. I would say it is worth between two thousand—maybe twenty-two hundred dollars, to me.

Mr. Sibbald: I think that is all, Mr. Armstrong.

The Court: If you gentlemen have finished with the witness the court desires to ask a few questions.—You own 2250 shares of stock of General Motors Company? A. Yes, sir, I do.

Q. What is the market price of that stock today? A. I did not look, but I imagine around sixty—up in the fifties or around sixty.

Q. Saturday it was sixty-two and a half. A. I haven't looked for the last three or four weeks.

Q. You also have 250 shares of Standard Brands? A. Yes, and I couldn't tell you about that.

Q. Hudson Motor Company? A. Yes, sir.

Q. Murray Corporation? A. Yes, sir.

Q. North American Aviation? A. Yes, sir.

Q. Transcontinental and Western? A. Yes, sir.

Q. You don't know the value of any of them? A. Not in the last two weeks, no sir.

Q. Now you say there is $9,000 held up as dividends on General Motors stock? A. Yes, sir.

Q. Anything on Standard Brands? A. No, sir.

Q. Hudson Motor Company, anything held up on that? A. No, sir.

Q. Anything held up on Murray stock? A. No, sir.

Q. North American Aviation? A. Yes, sir.

Q. How much is that? A. A full year, $875.25 I think; at $1.25 a share.

Q. $687.50 I make it.—In real estate what do you own? A. Well, I own that house in Miami, Florida, and of course the farm, I have an interest in that, Mrs. Armstrong also in that $17,600 that was paid.

Q. I am not concerned with that. The Florida home and furnishings are worth $20,000 I think you said? A. Yes. It didn't cost that, but I think it is worth that today though. I would put that value on it.

Q. Now, I am not talking about any of the property that is involved in the partition suit, but what other real estate do you have? Isn't there some in Indiana? A. Yes, 378 acres in Indiana.

Q. In whose name is that? A. Both. That is part of the 600 acre farm that I traded the place on the Isle of Pines for.

Q. What other property is there? A. Twenty acres on the Isle of Pines that I suppose I still own. I haven't paid the taxes since I left there in 1928.

Q. What is the value of the 378 acres in Indiana, would you say? A. I really don't know; but I did have a good trade, and Mrs. Armstrong would not sign. She wanted to sell it in ten acre tracts. I think she should get that 378 acres cheap.

Q. You think she ought to get it? A. I would have had it sold. I had the people down there, and she would not sign the deed. I would like to dispose of it.

Q. Have you any idea what it is worth? A. Oh, I imagine it must be worth—I paid for sixty acres five an acre—sixty-seven acres with a brick house, $1,500. Oh, I imagine around ten dollars an acre.

Q. What other property do you own? A. I have ten acres at Erskine, Florida—that is near Tampa.

Q. What do you say that is worth? A. Well, they say it is worth $35 an acre, but I would not care to sell it for that. I think I might have an offer of $35 an acre.

Q. Any other real estate? A. I think that is all.

Q. Now, how about money in the bank? A. I have—oh, close on to two thousand, maybe eighteen hundred in the bank.

Q. No other money, any other than what is in the bank? A. No. No, no other money with the exception of this at the Fifth-Third that is being paid in on the lots that are in litigation.

Q. I don't want that. That is a matter that is before another judge of the court, and it is up to him to decide that question. Now this jewelry is $6,000 you say? A. Yes, sir.

Q. That you say Mrs. Armstrong does not own? A. That's right.

Q. And what is the twenty acres on the Isle of Pines? A. Well, that is a question. It cost me less than ten dollars an acre.

Q. We will put it in at ten dollars an acre. And that is everything you own? A. That is everything I own.

Mr. Sibbald: May I ask the witness a question along that same line, Your Honor?

The Court: Yes.

Mr. Sibbald: How many lots do you have in Woodlawn, unsold and not in the partition?

A. They are most of them sold, but the money—they are in my name, nine of them; but they are in my name and the money is being paid into the joint account. The Negro Improvement Association bought four in my name, but they are paying into this account, and Your Honor didn't want me to—

The Court: What account do you mean?

A. The lots out there—the Fifth-Third. They are in my name, but are being paid into that joint account. They are in my name only. That can be checked on. Anything I say can be checked on.

The Court: Isn't that the lots—

Mr. Sibbald: I don't know how many there are. There are some in his name that are not in the partition suit.

The Court: But he says there are only nine, and are being paid—

Mr. Samuels: He has a group in both names under contract and some nine other under contract in his own name, but the payments go into the Fifth-Third in Lockland. She gets half the money.

Witness: She gets half the money, although the lots are in my name.

The Court: Under these contracts are the deeds executed until after the land is paid for?

Witness: When the land is paid for.

The Court: I want you gentlemen of counsel, the next time we have this case up, to be able to tell the court what is the quotation on these stocks, and what dividends if any are withheld, and what have been paid.

(And thereupon witness left the stand.)

Mr. Samuels: The defendant rests, may it please the court.

The Court: I will give you an opportunity on rebuttal to show if Mr. Armstrong owns more property than he says he owns, if you can show such a thing, and I will give you an opportunity to show that the values that he places are not the correct ones. Then I think I will have a fairly general idea of what this case is about.

Mr. Samuels: If the court please, I would like the opportunity of reopening the defendant's case to put Mr. Armstrong back on the stand, to ask a few questions one redirect examination.

The Court: Very well.

Raymond C. Armstrong,

having been previously sworn, resumed the stand and testified further as follows, to wit:

Redirect Examination

By Mr. Samuels:

Q. You told the court about the stocks and their values; what is your indebtedness, Mr. Armstrong? A. Well, I am indebted five thousand and attorneys' fees, whatever the amount will be, I don't know.

Q. Which attorneys' fees? A. Cincinnati and Miami. Your fees, and Mr. Ward's, and Mr. Schwartz'.

Q. That box of clothing that Mrs. Armstrong produced here, when was that delivered to her home? A. In 1950 or '51; I don't know.

Q. Was that after the separation? A. Yes, that was after the separation; after I got the divorce, whenever that was.

Q. You brought that up and had it delivered? A. Yes. There were two boxes. I don't know whether I brought up

what is in this box or not, but I brought two boxes of clothing. The rest she had herself.

Q. You brought up what you had at your home? A. Yes, sir.

Mr. Samuels: That is all.

Recross Examination

By Mr. Sibbald:

Q. You know there was only one box, do you not? A. I know there were two boxes. I said there were two. I delivered one box to Mrs. Armstrong's apartment. I delivered one box, or the man did, at Mrs. Nieman's. It was Mr. Nieman that brought this box. This is the box that was delivered to Mr. Nieman. I don't lie.

Q. That one box that was brought in here was the box that was delivered to Mr. Nieman's? A. That's right. That is the box. The contents I have not identified.

Q. It was clothing and a picture or two? A. That is possible.

Q. And you considered that was all you had at the home there that she was entitled to? A. No, I did not. All the clothing she had there I brought up. The other carton was much larger than that.

Q. Did you answer five thousand dollars about something? A. That's right.

Q. What is that? A. For living expenses, taxes and so on in 1952. I did not receive any dividends only $1,300 in 1952.

Q. You were asked whether you had debts? A. That's right.

Q. Do you owe somebody $5,000? A. I have debts of five thousand, secured by a note.

Q. To whom is that payable? A. To my brother, Arthur P. Armstrong. He is my oldest brother, and is living with me in Miami. If I don't owe him $5,000 I will give everything I have.

Q. He is not here and available? A. He is not here, but he holds the note. What was I going to live on without the dividends?

Q. Mr. Armstrong, since you say what were you going to live on, I might ask you what you did with the $19,800 that you drew out of the account in your name in the First National Bank of Miami in 1950, 1951 and 1952?

Mr. Samuels: I object, may it please the court.

The Court: You asked the witness what he owed, and he told you what he said he owed. Mr. Sibbald asked what it was for, and he gave an answer as to what it was for; and now Mr. Sibbald asked what he did with the money he drew out of the bank. Objection overruled.

A. Well, there is one check here for $2,000 to the Internal Revenue in 1950; there is another check to the Internal Revenue of $1,062.88; another check here—

Q. As you go along, will you give us the date of the check for $2,000? A. February 16, 1950. Also a check to the Internal Revenue for $1,062.88. September 15, Overseas Airway $195.50, ticket for the trip—they are all 1950 I am giving you here. A check for taxes of $325.88; City of Miami $181.71.

Q. What is that, taxes? A. That is for taxes. Another tax bill, Max Finch of $104.99 November 1, 1950. John Riemer, Treasurer, $177.27. John Riemer, County Treasurer, $190.23. John P. Friend, Clermont County tax $63.60, March 21, 1950. J. A. Wise for painting the house, $150

June 3, 1950. June 9, 1950, $50 to same. June 20, same, $50. June 16, same, $50. May 24, Tower Paint Company $100. April 22, Clermont County Farm Bureau $217.53. Clermont Farm Bureau $23.44. Same $88.76. The Warren County Farm Bureau Cooperative $49. Clermont Farm $57.17. I just brought up the cancelled checks of what I actually had to give in beginning my living expenses or what I spent on myself. These were the necessities I had to have money for.

Q. That is your answer to my question? A. Yes, sir, 1950.

Mr. Sibbald: I have nothing further to ask, if the court please.

By the Court:

Q. Are there any dividends being held up by Standard Brands? A. No, sir.

Q. How does that come about? A. Well, they send me the dividends.

Q. Any held up by Hudson Motor? A. No. $275.25.

Q. What is held up? A. No, they are not held up.

Q. Murray? A. No, they are not held up.

Q. Transcontinental? A. They are not held up.

Q. So the only dividends that are held up are $9,000 held up by General Motors, and $678.50 held up by North American? A. That's right.

Q. No others at all? A. No, sir.

(And thereupon witness left the stand.)

The Court: Now can you gentlemen agree on the value of these stocks?

Mr. Samuels: I think I have them here.

Mr. Sibbald: I think we can. I have some here that I thought could be used.

Mr. Samuels: When we adjourned Monday Your Honor said you wanted us to get a valuation. Yesterday morning I obtained the values from Westheimer and confirmed them by newspaper quotations. Every day they change.

The Court: Why all the conversation? Can you agree on the value of these stocks?

Mr. Sibbald: I had C. H. Reiter, in the Union Trust Building, prepare an entire list and brought it, and showed it to the gentlemen and asked them if they would agree as to the figures as of noon today, and I understood before Your Honor came on the bench that they would agree to the figures.

Mr. Samuels: That is correct.

Mr. Sibbald: I propose to offer it.

The Court: If you agree, why not read it into the record?

Mr. Sibbald: Very well, Your Honor. I will be glad to do that. General Motors, 62; Standard Brands, 28; Hudson Motors, 15; Murray Corporation, 21⅜; North American, 16⅞; Transcontinental, 18.

The Court: It is so agreed as to the value of the stocks today?

Mr. Sibbald: Yes, sir.

Mr. Samuels: Yes. In 1952 Hudson not only paid 75 cents in cash, but five per cent in stock?

Mr. Sibbald: That is right.

The Court: How many shares does that make?

Mr. Sibbald: 17½ additional shares.

The Court: 367½ in all?

Mr. Sibbald: Yes.

Mr. Samuels: TWA declared a ten per cent stock dividend as of January 15, 1953, 55 shares.

The Court: That is all the stock?

Mr. Samuels: That is correct. The defendant rests, may it please the court.

And thereupon the plaintiff called in rebuttal,

Melvin Cook,

who, being first duly sworn, testified as follows, to wit:

Direct Examination

By Mr. Sibbald:

Q. What is your name? A. Melvin Cook.

Q. Where do you reside, Mr. Cook? A. 1552 Holman street, Covington.

Q. What is your business? A. Cook Jewelry Company.

Q. What is that, a wholesale or retail business? A. Mostly wholesale.

Q. How long have you been engaged in the jewelry business? A. Four years.

Q. Are you acquainted with the value of jewelry, diamonds and such as that? A. I think so.

Q. Buying and selling? A. I specialize in diamonds.

Q. Mr. Cook, do you know Mrs. Armstrong, here? A. She was in about two weeks and I appraised some jewelry.

Q. Did you furnish a list of the items? A. Yes, sir.

Q. I will ask you if the paper in my hand is the list made up by you? A. That's right, sir.

Q. Is that in your handwriting? A. Yes, sir, it is.

Q. Does it list the items she brought to you for appraisal and describing them? A. That's right, sir.

Q. And the figures on this list are your figures? A. That's right, sir.

Q. And your opinion as to the fair and reasonable market value of those items? A. Yes, sir.

Mr. Sibbald: I will offer the list in evidence, if the court please, and have no further questions to ask the witness.

The Court: The list may be admitted as Exhibit 13.

Said list of jewelry with appraisal figures having been admitted in evidence by the court was marked Exhibit 13, is hereto attached and made part hereof.

Cross Examination

By Mr. Samuels:

Q. Mr. Cook, did you say you have been in the business for four years? A. Yes, sir.

Q. For yourself? A. Yes, sir.

Q. In the Provident Bank Building in this city? A. That's right, sir.

Q. In appraising diamonds and jewelry there are differences of opinion, aren't there, among jewelers? A. Yes.

Q. Did you weigh these rings, as to the amount of carats? A. No, that was impossible. They would have to be taken from the mountings to do that. These are approximate values.

Q. I am talking about the weight. A. No, no. I had to guess at the weight of the stones.

Q. And could you be wrong as to a substantial fraction of a carat? A. Not too far wrong, no, sir.

Q. What would you say? A. Within say ten per cent.

Q. Could you be mistaken as to 25 or 50 per cent depending on the manner in which it is set, and the mounting? A. Well yes, as far as the mounting. Some of them I never took into consideration. If broken up the mountings would be a total loss.

Q. Just looking at it, some give the impression of a larger or smaller stone? A. Yes, they do, but in this case the stones were large.

Q. You simply guessed at the weight? A. Yes.

Q. I call your attention to the first item here, one platinum mounted ring. A. One diamond, 2 carat, 14 small diamonds, value $1,100.

The Court: You mean you guessed or estimated?

A. Well, estimated.

Q. (By Mr. Samuels) Mr. Cook, on this first item if I were to tell you that by measurement that was a 3-carat diamond, what would you say? A. Mrs. Armstrong told me that was 2 carats.

Q. You took her word? A. That's right.

Q. You appraised it at $1,100 on the basis of it being a 2-carat diamond? A. That's right.

Q. If it were three, what would you appraise it at?

The Court: Now Mr. Samuels, what is the purpose of this? Your client testified that in his judgment it was worth between five and six, and this man says not so much. If it is his opinion and not hers, what difference does it make? The only question before me is, who does it belong to. It seems to me you are taking up a great deal of the time of the court on matters not material to the issues involved.

Mr. Samuels: Very well, Your Honor. I have nothing further.

(And thereupon witness left the stand.)

Mr. Sibbald: If the court please, I want to offer in evidence the bank ledger sheet of the Cincinnati Bank & Trust Company, which has been identified as "X", being a ledger sheet of the account of Ray Armstrong in that bank.

Mr. Samuels: Objection, on the ground it is irrelevant.

The Court: As I see it, by your putting your client back on the stand and asking the question about his debts, you

have changed the situation about some evidence that I considered incompetent then. Now he says he if five thousand dollars of debts. Mr. Sibbald, I think and I have ruled that way before, has a right to show how much money the defendant drew out of the banks in the period which seems to be in question, 1950, 1951 and 1952, as reflecting on the question of the statement of indebtedness.

Mr. Samuels: I will withdraw the objection.

The Court: The ledger sheet will be admitted as Exhibit 14.

Said ledger sheet of the Cincinnati Bank & Trust Company (photostatic copy) having been admitted in evidence by the court, was marked Exhibit 14, is hereto attached and made part hereof.

Mr. Sibbald: I offer the document identified as "M", being the income tax return of Raymond and Mary Armstrong, 1949.

Mr. Samuels: No objection.

The Court: It may be admitted as Exhibit 15.

Said income tax return for 1949 (photostatic copy) having been admitted in evidence by the court, was marked Exhibit 15, is hereto attached and made part hereof.

Mr. Sibbald: I offer in evidence if the court please, the ledger sheets of the First National Bank of Miami, showing the bank account of Ray and Mary R. Armstrong covering the period from December 27, 1948 until May 2, 1951 when it was closed.

Mr. Samuels: I object. They were living together.

The Court: It seems to me the evidence is in, the amount of money that was in the joint account when he closed it, and started a new account in his own name. If that is true, I can't see the relevancy of these sheets.

Mr. Sibbald: Then I offer in evidence his individual account, which started May 2, 1951 and ran until December 22, 1952 according to these sheets. During that period I say to Your Honor—subject to being mistaken as to the exact amount, but it shows withdrawals, other than small miscellaneous checks, withdrawals of five hundred or more, amounting to some forty-two hundred dollars. That is during the period when he says he had nothing to live on.

Mr. Samuels: I object. We have been all over that.

The Court: Objection sustained.

(Said individual account was thereupon marked for identification "Q".)

And thereupon the plaintiff,

Mary R. Armstrong,

having been previously sworn, resumed the stand, and testified in rebuttal as follows, to wit:

Direct Examination

By Mr. Sibbald:

Q. Mrs. Armstrong, during the time that you and your husband lived together in Florida, and particularly the time when you occupied jointly with some relatives your homes there, I will ask you if at any time during that period of time you objected to having a telephone in the house? A. I always wanted a telephone.

Q. When you came to Cincinnati and rented your own apartment, did you have a telephone put in? A. Immediately.

Q. Mrs. Armstrong, back in the month of June of 1948, when you say you had some injury to your mouth, you may tell the court whether or not your husband went with you to see Doctor Holton at any time? A. Never.

Q. Now after you left here the other day, I will ask you if at my request you prepared a list of the items of property in the residence at 922 Northwest Eighth street in Miami? A. That list was as I left it. That was in the home when I left it.

Q. You mean these sheets here? A. Yes, sir.

Q. And you prepared those over the time since we were in court the other day? A. Yes, sir.

Q. I will ask you what the figures are that you put in the lefthand column. A. Well, they are my conservative estimate of what these things are worth or would sell for.

Q. You prepared this list from memory? A. Yes, sir.

Mr. Sibbald: It totals $7,732, Your Honor. I would like to offer this list in evidence as representing the items she claims were in the house and the values she has put on them.

Mr. Samuels: I object.

The Court: This court is not going to take up each item in the house. Mr. Armstrong has given his estimate of what the furnishings in the home were worth. You have a right to have her give her estimate. Objection is sustained to the introduction of the list.

Mr. Sibbald: Exception.

(Said list of furnishings was thereupon marked for identification "R".)

Q. Did you total it? A. No, sir.

Q. The figures are yours? A. Yes, sir.

Q. Would the total of that list be your estimate or opinion as to the value of the property in the house? A. Yes, sir.

Q. And if it amounts to $7,732 that is your estimate?

Mr. Samuels: Objection as to the form.

The Court: Overruled.

A. Yes, sir.

Q. Now Mrs. Armstrong, I will ask you what jewelry you took to Mr. Cook for appraisal? A. Well, I took 2 solitaire diamond rings; two pins; a diamond bracelet set in white gold; a diamond wrist watch, and a necklace with diamonds hanging down, and a sapphire and diamond ring. I think that is all that is on the list, Mr. Sibbald.

Q. You may state whether or not that is the jewelry that you say Mr. Armstrong gave you? A. The last piece I got was nineteen years ago from him.

Q. You haven't answered my question. You say that the jewelry you took to be appraised is the jewelry he gave you? A. Yes, sir.

Q. Now did he give you any jewelry before you were married? A. Yes, sir, he did.

Q. Did you take that to Mr. Cook? A. Oh, no, sir.

Q. I will ask you if you made a list of that jewelry? A. Yes, sir, I have.

Q. Can you recall what it consisted of? A. Well, I had a little finger ring, and Mr. Armstrong gave me a three stone ring, and I had a black neck watch and he gave me a gold brooch which we had set into one of those pins later in white gold. Excuse me, sir, I got an engagement ring from Mr. Armstrong in 1916.

Q. You may state whether or not any of that is included in that list that Mr. Cook made up? A. No, sir; none of that is included.

Q. Mrs. Armstrong, what personalty, so to speak, did Mr. Armstrong have in Florida? A. A collection of guns and ivories.

Q. What do you mean by ivories? A. Small figures made by the Chinese, about that high as a rule, and the value—

Q. How many of those did he have? A. About a dozen, I think.

Q. And what in your opinion was the value of them? A. Well, he paid—the least was $25 apiece, if I remember right, for the ivories.

Q. I didn't ask you what he paid for them, but your opinion of their value. A. I think the value was about $300.

Q. What other personalty did he have? A. When I left he had a 32-foot Cris-Craft cabin cruiser, and always had a new automobile.

Q. About the cabin cruiser, do you have any idea what it is worth? A. I know nothing about boats.

Q. What kind of an automobile did he have? A. The last was a new Hudson.

Q. Was that a coupe or a four door car? A. Yes, a four door.

Q. Do you know anything about the value of it? A. No, sir, I really could not tell you.

Q. Now what jewelry did he have? A. Well, he had a yellow gold watch, and a yellow pin with a diamond in it, and a platinum with four diamonds and a sapphire, and a ring with two sapphires and a diamond in it.

Q. Can you give us any idea of the values of those, your opinion of it? A. Well, I would say that—I am really not in a position to say. I wouldn't like to say. I don't know.

Mr. Sibbald: Cross examine.

Cross Examination

By Mr. Samuels:

Q. Mrs. Armstrong, do you recall when Mr. Armstrong made out the tax returns for the city of Miami or county of Dade on the personal property? Do you remember that? A. No.

Q. Don't you know he wanted to put in $1,500 and you objected to it? A. I did not.

Q. Do you know what value was put in? A. No, I do not.

Q. Would not $3,000 cover everything in the house? Would you buy it for $3,000? A. Gladly, if it is the stuff I left there when I came away.

Mr. Samuels: That is all.

By the Court:

Q. Is there any other stock that your husband owns that you know of, that is not listed here? A. At one time, after we went back in 1948, he received stock in a registered envelope. That I do know. He concealed it from me. How many shares it was I couldn't say.

Q. In what company? A. I think it was Standard Brands.

(And thereupon witness left the stand.)

Mr. Sibbald: That is all, if the court please. The plaintiff will rest.

Mr. Samuels: The defendant rests.

And thereupon, the court, having heard the evidence and the arguments of counsel for plaintiff and defendant, after consideration rendered a decision in favor of the defendant on the issue of divorce, and in favor of the plaintiff on the question of alimony, all of which appears of record herein.

Thereupon, and within the time provided by law, the defendant by his counsel moved the court to set aside said

judgment, order and finding as to alimony, and for a new trial herein, which motion the court overruled.

And now comes the defendant by his counsel, and tenders this, his bill of exceptions, certified by the court as containing all the evidence introduced by the parties or either of them upon the trial of this cause, the same having been filed with the clerk of the courts within the time provided by law for filing the same, after the overruling of said motion for new trial, and asks that the same be allowed, settled, signed and made part of the record and proceedings herein, which is accordingly done.

Witness the hand and seal of said court, this fourteenth day of December, A. D. 1953.

Bell,
Judge of the Court of Common Pleas, Hamilton County, Ohio.

EXHIBIT 1.

Ashville N. C. Sept 27 1948

I—Raymond C. Armstrong, solemly before God swear—That I love my wife Mary R. Armstrong and am assuring her of this because of a terrible misunderstanding. I shall never, never again bring us to the brink of divorce because I know my wife is—and has always been working for my best interest and is all a good and faithful wife should be. I shall never bring up unpleasant subjects which have caused her so much worry in the past.

Just as soon as possible after I arrive in Cincinnati I shall discontinue all legal actions which are pending and drop all charges I have placed against her. I shall do my

utmost to make my wife happy in the future: I have not done so in the past.

The Stocks and Moneys and War Bonds which are now in the process of litigation she,—Mary R. Armstrong is to keep, until such time as she decide to put them as they were before July 1 1948.

The jewelry she possesses is her's alone.

I make the above statements of my own free will.

Raymond C. Armstrong

Ashville North Caroline Sept 27, 1948.

EXHIBIT 2.

Deposition of Raymond Kies.

Raymond Kies,

of lawful age, being first duly sworn, on oath deposes and says as follows:

Direct Examination

By Mr. Sibbald

Q. You may state your name. A. Raymond Kies.

Q. Where do you live? A. 488 Wilke drive.

Q. What position have you held during the past years in the county government? A. Criminal Court bailiff.

Q. Now, you are married to a sister of Mary R. Armstrong? A. Yes.

Q. How long have you known Mary Armstrong? A. Since 1916, or '17, I don't know which.

Q. And will you tell us just how you became acquainted with her? A. Well, there was a bunch of us fellows used to patronize a saloon at Gest and Intermediate and Roy used to come down into that saloon and that's how I met him, and I bought an automobile from him, an old Studebaker.

Q. And tell us about when you bought it? A. That I couldn't tell you, Walter, whether it was before I went to the army or when I come back from the army, I was trying to get that straight in my mind, but I did buy a Studebaker from him, and I did go up, used to go in the garage quite frequently.

Q. What prompted you to go to his garage frequently? A. Well, I knew him and knew this Tommy Kelly, one of the mechanics, and I kept my car up there.

Q. Can you recall the approximate length of time you kept your car there? A. It wasn't very long because the car wasn't much good and I eventually sold it back to Armstrong.

Q. Now, during the time you kept it there did you then become acquainted with Mary Armstrong? A. Yes, I seen her there in the garage and also in the office, she was in the office all the time and then a lot of times she would come out and tell you where to put your machine, where it was, and stuff like that.

Q. When you did park there how often would you be in and out of the garage? A. Every day I was in and out some time.

Q. And will you tell us whether or not when you were in there whether you saw her there each time you were in the garage?

Mr. Samuels: I want to note an objection to the form of the questions, leading.

Mr. Sibbald: I will withdraw the question.

Q. You may tell us about how often you saw her there in the garage? A. Well, there was occasions when I would go up Clark street I seen her, the office was right inside the

window, onto the right was the entry-way that went up to their apartment upstairs or you could go all the way down on Clark or turn left at the door and go into the office; and that was all glass, and clear to the door where you pulled in with your car was glass; and that office was visible right from the sidewalk and many times I go up the street and could see her from the sidewalk, she would always be in there, and if you were on the other side of the street you could see her.

Q. Now, with reference to the times that you saw her there will you tell us what you saw her doing? A. I seen her always working in the office and keeping books and I have seen her out in the garage. Now, I don't recall whether I actually ever seen her actually put any tires on wheels, but I know I seen her, like people have set of baby buggy wheels that had been re-tired, I seen her get them out and collect the money for them.

Q. Aside from this office and garage business, what else did they have in the way of business? A. Well, he dealt in used cars and then they had this tire business, that was a business where they retired solid rubber tires, you know that's during the time when all the funeral hearses and such vehicles as that was of hard rubber tires, why they had, Armstrong as I understand was in the carriage business before that and knew how they re-tire these rubber tires and it was quite a business.

Q. Will you tell us whether or not they had a gasoline business? A. That I couldn't, I don't know, I just don't recall that. I believe there was a gasoline pump as you pulled inside the garage, I am not sure about it.

Q. Can you tell us— A. I believe there was a gasoline pump. You see, the garage, you come in, there's an entry-

way, right at the end of the entry way was a gasoline pump. Now, I don't recall, it's been a long time since I was down there.

Q. And can you recall what length of time elapsed after you became acquainted with the Armstrongs until you last saw them there in that place of business? A. I believe, I don't know, they sold out shortly after I got back from the Army, I would say about 19—the last I seen of them was about '22, 1922.

Q. How long were you in the Army? A. 18 months.

Q. Now, have you seen them from time to time since you saw them on Clark street? A. Well, later on I met my wife and married, and I didn't know until after I went with her five or six months that she was a sister to Mary Armstrong.

Q. You have seen them then from time to time since you met your wife and married your wife? A. Yes, quite a few times, Ray's been out here.

Q. Did you ever visit them in their homes, either in the Isle of Pines or in Florida? A. No, no.

Q. Where have you seen them and when? A. I have seen them here in my own home and when they would come up they had a little farm on Sheeb road, went out there quite frequently, and I believe I was up to their place up at Goshen twice, wasn't it—(addressing Mrs. Kies).

Mr. Samuels: Don't ask your wife.

A. I just thought she would recall. Once or twice, I don't recall; not more than three times, make it that way.

Q. Have you any recollection, or will you tell us what recollection you have of a monkey Armstrong had?

Mr. Samuels: I object.

A. Well, Waiter, most of the stuff that I could tell you about the monkey would be hearsay.

Q. I don't want you to tell hearsay, just what you yourself know.

Mr. Samuels: Object to that question, he said all he could say would be hearsay.

Mr. Sibbald: No, he didn't say that.

A. I said practically all I could say, the bad things that the monkey done, was hearsay.

Mr. Samuels: You didn't say bad things, you said, "All the things I could say about the monkey—"

Mr. Sibbald: No, he didn't. Why engage in any argument.

Mrs. Kies: No, Mr. Samuels, I seen the monkey on Sheeb road—

Mr. Samuels: Mrs. Kies, please, I could ask that you be excluded.

Mrs. Kies: My husband is sick and I won't be excluded.

Mr. Samuels: Either he can testify or he won't testify, either he is too sick—

Mr. Sibbald: Julius, you can behave yourself.

Mr. Samuels: Mrs. Kies is not a witness.

Mr. Sibbald: I take it that Miss Brown has taken down what you said, and he has not attempted to say what you said—

Mr. Samuels: I was complaining about what Mrs. Kies said.

Mr. Sibbald: You also complained he couldn't testify. Just make your objection in the record and be quiet and let's proceed.

Mr. Samuels: I am going to talk into the record.

Mr. Sibbald: All right, but don't talk to the witness.

A. You know all about that stuff.

Q. Mr. Kies, I don't want you to tell what somebody told you, I want you to tell us did you ever see this monkey yourself? A. Yes, lot of times.

Q. Where. A. I seen him at Sheep Road plenty of times down there on the farm, down there.

Q. When you saw the monke, what was its behavior? A. Well, he had him—

Mr. Samuels: I object.

Mr. Sibbald: Don't pay any attention to the objection.

A. Had him on a chain around its neck, the collar around its neck, would let him run up the tree, if you would get near the tree he would run at you and spit at you, well, get, want to bite you, then he done that quite a few times and I used to like him, tried to pet him, but never could get near enough, and the same way at Goshen, had him in a big cage, and never seen him outside of that cage. Of course he play possum, you put your finger there and he make a grab at it. That's as much as I know about it.

Mr. Samuels: I move that all be stricken out for the reason it is irrelevant, incompetent and immaterial.

Mr. Sibbald: You may cross examine.

Cross Examination

By Mr. Samuels:

Q. Mr. Kies, when did you mary your wife, who is a sister of Mrs. Armstrong? A. September 13, 1924, wasn't it?

Mrs. Kies: '26.

A. '26.

Q. '26? A. Wait a minute.

Q. Take your time, don't hurry.

Mrs. Kies: '26.

A. '26, was it? I thought it was sooner.

Q. '26? A. What year did you go in the prosecutor's office?

Q. '26 or '27. A. '26; it was when I went in the Sheriff's office.

Q. How long did you know Mary Armstrong before you married Mrs. Kies? A. I actually never knew her only to go in to say "How do you do", to get my car, and stuff. From I'll say 1916 on up—like I was in the Army 18 months, when I come back I used to go over to that saloon and I went say for a couple of years from '20 on.

Q. When were you in the Army 18 months, what period? A. Part of '17, and '18.

Q. In the middle of '17 and all of '18? A. No, I went in in April or March, of '17.

Q. And you came out about September? A. June or July, I think it was July of '18.

Q. And you say you didn't know that Mrs. Armstrong was a sister of the woman you were marrying until a short time before that, is that right? A. Yes, until a short time before. We got talking one night about up there on Clark street and she said, "That's my sister that had that garage up there" and I said, "Is that so".

Q. You know what Mr. Armstrong did around the tire and garage business? A. Oh, I seen him, he repaired cars and adjusted automobiles, he was quite a repair man on automobiles and I stood and watched him re-fire these rubber tires a lot of times.

Q. Solid rubber tires in those days? A. Yes, all solid stuff. It was quite a big game at that time. I think he was the only one in town that done that.

Q. You know he and his father had been in the carriage manufacturing business before that? A. No, I didn't know at that time, until I got in the family.

Q. That's when you learned that? A. Yes.

Q. You know how long he had been in the carriage manufacturing business? A. No, sir, I don't.

Q. He also had a tire business, didn't he, where he sold tires, besides re-tiring machines he sold automobile tires, didn't he? A. I don't think so, not that I recall up here I don't recall selling any.

Q. Did he sell any automobile accessories? A. No, none that I know.

Q. Did you know him when he had a place on Storrs street? A. No.

Q. But you do know he bought and sold used automobiles, that you know? A. Oh, yes, because I bought that Studebaker from him.

Q. You bought one of those cars. He had a fairly good business there, didn't he? A. That I couldn't tell you. Oh, according to the business, what you would see around there, you would naturally say—

Q. That's what I am referring to, what you yourself could observe? A. Yes.

Q. And that would be during the period of 1916 to 1921, outside of the 18 months you were in the Service? A. 1921, somewhere around there.

Q. Did you know Mr. Armstrong personally before he married Mrs. Armstrong, or not? A. No, no, I never knew him until I met him up there on Clark street.

Q. You recall the name of that tire business? Bulldog Tire Company. You don't remember the name? A. I don't remember the name.

Q. You say the Armstrongs lived above the business place? A. Supposedly. I would see her go up the steps, on the side there was an entrance that come out on Clark street and right up there, I imagine went up to the flat.

Q. On the second floor? A. Yes.

Q. You have been in ill health, haven't you, for some little time? A. About 7 months.

Q. You believe that you will be able to appear in court as a witness if called within the next few months? A. I doubt it much. I may after 30 days or 45 days.

Q. For the present you are not able to? A. No, I am not able to go out at all, the Doctor don't want me to go out.

Q. Did I understand you to say that the last time you saw Mr. and Mrs. Armstrong was in 1922? A. Either '21 or '22, I forget just exactly what time it was. I had bought me a business further down on Clark street along about that time and I didn't go up in the neighborhood any more.

Q. You mean you were in business yourself on Clark? A. Yes, Clark and Harriet.

Q. What business? A. I had bakery shop, candy store, stuff like that.

Q. I think that's all.

And further deponent saith naught.

Raymond Kies

[Certificate attached.]

EXHIBIT 3.

In the Circuit Court of the Eleventh Judicial Circuit, in and For Dade County, Florida. In Chancery.

Bill of Complaint For Divorce.

(Filed April 16, 1951.)

No. 140311—Raymond C. Armstrong, Also Known as Ray Armstrong, Plaintiff, vs. Mary R. Armstrong, Defendant.

To the Honorable Judges of the Above Entitled Court, In Chancery Sitting:

The plaintiff, Raymond C. Armstrong, also known as Ray Armstrong, brings this his bill of complaint against Mary R. Armstrong, and complaining says:

I.

Plaintiff and defendant are both residents of Dade county, Florida and have been residents and citizens of Dade county, Florida for approximately twenty-eight (28) years. Plaintiff and defendant own a home in the names of Raymond C. Armstrong and Mary R. Armstrong, which home is located on that certain property situated in Miami, Dade county, Florida, more particularly described as follows, to wit: Lots twelve (12) and thirteen (13) of black eleven (11) of Spring Garden, a subdivision of Dade county, Florida, which said property has been the home place of the plaintiff and the defendant since the year 1945.

II.

Plaintiff and the defendant are both registered voters in Dade county, Florida and have been so registered for many years next preceding the filing of this bill of complaint and

both the plaintiff and the defendant have maintained these premises as their home, openly and notoriously, with the exception that the defendant has not resided there for the past six months by reason of the matters and things hereinafter alleged and set forth.

III.

Plaintiff would show unto the court that he and the defendant were married in 1917 at Cincinnati, Ohio and that there have been no children born of the wedlock.

IV.

Plaintiff would show unto the court that in 1917, at the time and prior to the marriage, plaintiff was engaged in business and was the proprietor of a reputable business in Cincinnati, Ohio known as the Bulldog Rubber Tire Company. Prior to that time the plaintiff had been in an independent business for the sale of buggies, harness, tires and other miscellaneous items. Plaintiff is now sixty-five years of age and at the time of his marriage in 1917 he was approximately thirty-one years of age and had been a successful and independent business man for quite a few years prior to the time of his marriage and had accumulated a reasonable estate consisting of his inventory, stock on hand and a going business and the plaintiff was the recipient of an income which at that time was very satisfactory. Plaintiff would show unto the court, however, that the defendant, at the time of the marriage, brought no property to the marriage and was wholly without business training in the business of your plaintiff.

V.

Plaintiff would show unto the court that in all of the thirty-four (34) years after the marriage the plaintiff has

continued to be the head of the family in the operation of all business activities and that the defendant has never contributed any property, through inheritance or by way of active work in any business as conducted by the plaintiff. The defendant has confined her sole activities to that of a housewife and has never shared in any business activities with the plaintiff.

VI.

Plaintiff would show unto the court that within several years after his marriage, in or about the year 1923, the plaintiff had sufficient holdings to where he was able to liquidate the same and together with his wife moved to Florida, which at that time became their home. Plaintiff would show unto the court that between the year 1917, the time of the marriage, and the time of the liquidation of his business in the north in 1923, that the defendant had contributed nothing to the enhancement of the material assets of the plaintiff. Plaintiff would show unto the court that when he and the defendant moved to Florida in 1923 that he discontinued his active business, in so far as the mercantile or retail business was concerned, and thereafter confined his interests to investment and re-investment of his funds, either in stocks and bonds or in real estate development; that among the ventures entered into by the plaintiff was a sojourn or visit to the Isle of Pines, Republic of Cuba, for several years from the year 1925 through the year 1928, at which time the plaintiff invested in and engaged in the raising of citrus fruits and vegetables; that the plaintiff then sold out his interest with the exception of twenty (20) acres of land having a value of about $10 per acre, which he still owns in the Isle of Pines but which has no income or any real value.

VII.

Plaintiff would show unto the court that since he and the defendant returned to Miami, Dade county, Florida, that he and the defendant have maintained a residence and citizenship in Dade county, Florida ever since that time and have been registered voters here, claiming no other place for their residence or domicile.

VIII.

Plaintiff would show unto the court that the first few years of the married life were free from any overt acts of cruelty on behalf of the defendant towards the plaintiff but yet during said early years of marriage it became evident that the defendant could not control her temper. On many occasions she would fly into fits of ungovernable rage without any provocation whatsoever and during these periods of rage she would apparently be completely out of her mind and out of control of her faculties. On one occasion which took place in Miami, Florida, during one of those fits of ungovernable temper and rage, the defendant seized an automatic revolver, and either with malice or with great carelessness in her rage shot at the plaintiff missing him only by a few inches; that on many other occasions where the defendant would fly into these fits of ungovernable temper and rage, she would threaten to kill the plaintiff if he ever went into a divorce court and asked to be divorced and to be relieved of the legal liability of living under these conditions.

IX.

After the plaintiff and the defendant returned to Florida from the Isle of Pines in 1928 plaintiff and defendant continued to live in Miami, Florida, making this their home

and sole place of abode. Plaintiff at that time had acquired a farm in Hamilton county, Ohio, and later, in 1938, the parties, plaintiff and defendant herein, acquired an additional farm at Goshen, Ohio, both of which farms were acquired through the money or assets of the plaintiff but the title was placed in the joint names of the plaintiff and defendant. Plaintiff and defendant would spend several months each summer in the operation of those farms in Ohio but the place of resident and matrimonial domicile was never changed from Miami, Florida.

X.

Prior to the year 1943 the plaintiff had kept his bank accounts in his own name individually and the safety deposit vaults were still in the name of the plaintiff. Plaintiff had prior thereto put the two farms in Ohio and the home place in Miami, Florida and a small subdivision in Cincinnati, Ohio, in the joint names of plaintiff and defendant, the same as exists today but all bond accounts and bank accounts were in the name of the plaintiff individually.

XI.

Plaintiff now charges that in 1943 it is apparent that the defendant was beginning to plan a separation although that fact had not become evident to the plaintiff until subsequent years because she insisted that she was not protected or not being treated fairly and requested that the plaintiff put the bank accounts and the safety deposit vaults in their joint names so that it would be more easily accessible to her in the event the plaintiff was out of the city, or was ill or incapacitated or died. Plaintiff, relying upon the promises and representations of the defendant that she only wanted that protection for an emergency and

that she would not interfere with the plaintiff in his business activities or his trading on the stock exchange or any of his regular business ventures, and simply relying upon her assurance, did place the bank accounts and the safety deposit vaults in the joint name of both the plaintiff and defendant but did not turn over or vest the title to any of these funds or any of the contents of the safety deposit vaults to the defendant, the wife. Plaintiff would show unto the court that shortly after these bank accounts had been changed and safety deposit vaults placed in the joint names, the defendant became increasingly difficult to live with. She was constantly berating the plaintiff in each and every of his activities and she sought to interfere with him in his business affairs and was very critical of any business or social relationships of the plaintiff. She began to criticize the plaintiff not only at home but in the presence of friends, making life generally miserable for the plaintiff.

XII.

This condition became increasingly difficult up until the first actual breach took place between the parties in the year 1948. On or about the first or second day of July, 1948, while the plaintiff and defendant were at Goshen, Ohio, and at a time when the plaintiff advised the defendant that he was going to an auction sale with a neighbor, the defendant flew into a great rage and accused the plaintiff of trying to search for things which she had hidden away and accused the plaintiff of all manner of indiscretions and made accusations which were wholly unfounded and only the result of her imagination. There was no provocation for such an action but the defendant seemed to fly

into a rage very easily and thereupon would practically lose all control of herself or control of her faculties. Plaintiff nevertheless did not engage in any altercation at that moment but left and went to the auction. When plaintiff returned the defendant had left the premises, moving from their home to the home of her sister, a Mrs. Clancy. Plaintiff found several days thereafter that contrary to the specific understanding which he had had with the defendant with reference to the bank accounts and stocks and securities that on July 2, 1948 the defendant, without any authority from the plaintiff, withdrew from the Cincinnati Bank and Trust Company $10,800, which constituted practically the entire account of the plaintiff, leaving only about $200 in said account; that on July 9 she withdrew to the order of cash $700 from the Loveland National Bank, Loveland, Ohio, and on July 6 she withdrew $500 from the First National Bank at Miami, Miami, Florida. In addition thereto plaintiff found that the defendant had entered the safety deposit vault in Cincinnati, Ohio, containing about $4,800 and the safety deposit vault in Miami, Florida which contained about $90,000 of stocks, and jewelry in the amount of about $6,000, and took all of the deeds, papers and records of the plaintiff and refused, upon demand, to return them or any part of the same to the plaintiff, making it necessary for the plaintiff to file a suit in the courts of Ohio, joining the defendant as party defendant and obtaining an injunction to prevent her from disposing of these stocks valued at $90,000 or jewelry valued at $6,000, more or less.

XIII.

Plaintiff would show unto the court that defendant's actions were wholly unauthorized and that she did not have any title or claim to any part of the stocks and bonds or the money, excepting insofar as she would have a claim as the wife of the plaintiff. Nevertheless she wrongfully sought to convert this money, stocks and jewelry in excess of $100,000 to her own benefit and refused to return them to the plaintiff as requested. Plaintiff would show unto the court that the defendant evaded service and concealed herself even though she was supposed to be living with her sister at 4321 Cappel Drive, Price Hill, Cincinnati, Ohio, and that the plaintiff was never able to get service upon the defendant through any court action in the state of Ohio. Thereafter the plaintiff in Miami, Florida placed said matter in the hands of his Florida attorneys and authorized them to institute a divorce action and suit for the proper recovery of the funds. The plaintiff was never able to contact the defendant in Ohio nor able to obtain process but the defendant did return to their home in Miami, Florida and did meet with the plaintiff here in Miami. After considerable negotiations between plaintiff and defendant the defendant then went with the plaintiff to the office of his attorney in Miami, Florida, at which time the defendant agreed to return the plaintiff's property to him and to attempt to live again together as husband and wife without the altercations which had been occasioned prior thereto. In the presence of plaintiff's counsel defendant promised to return all of the assets and promised to become reconciled and to try to make a happy home for the plaintiff. Based upon these representations and relying upon her promise to return to him the stocks and bonds and the

money in question and to desist from any further unwarranted attacks, the plaintiff advised his attorney in the presence of the defendant to discontinuing any action. The defendant demanded of said attorney a letter acknowledging that these instructions had been given to him to discontinue any action for divorce as will show by a true copy of said letter attached hereto, marked Plaintiff's Exhibit "A", and made a part hereof, the original or which was turned over to the defendant and which she no doubt still has in her possession.

XIV.

Plaintiff would show unto the court that he became reconciled in good faith and relied strictly upon the representations of the defendant which he considered to have been made in good faith. The securities in the amount of some $90,000 were held in Cincinnati, Ohio or somewhere in the north by the defendant so the plaintiff and defendant, shortly after the conversation of September 20, 1948, went to Cincinnati, Ohio by automobile for the purpose of having the defendant turn back to the plaintiff the securities as promised. After reaching Cincinnati, Ohio and after the defendant had conferred with her sister or some other parties she completely revoked her previous agreement and refused to turn over the securities to the plaintiff; that thereafter at any time when the plaintiff mentioned the said securities and asked her to keep her promise with reference to the delivery of the same she would fly into fits of ungovernable temper and rage, stating that she would never turn those securities or assets back to the plaintiff; that the defendant had taken altogether about $19,000 or $20,000 in addition to the $90,000 worth of listed securities

and the only part of her agreement that she complied with was the return by her to the joint account of approximately $7,000 which was used by the plaintiff and defendant for their living expenses and for general expenses.

XV.

Plaintiff would show unto the court that the parties continued to live in Miami, Florida as husband and wife until October, 1950, a period of approximately two years, after the alleged reconciliation in September of 1948 but that during said period of time the defendant made life miserable for the plaintiff, constantly indulging in fits of violent and ungovernable temper and refused to return to the plaintiff any portion of the additional money or the securities and even going to the extent of attempting to stop some of the companies from issuing dividends in the name of the plaintiff in whose name the stocks had always been registered; that when the defendant was asked why she had made her promise and made the representation as to reconciliation in September, 1948, she replied to the plaintiff that she had only come back to live with him out of revenge so she could continue to irritate him and make life miserable for him; that during said two year period of time, from September, 1948 until September, 1950, plaintiff's hands were completely tied so far as any investment or re-investment of his funds or the handling of his business affairs were concerned and any attempt to live together as husband and wife became a sheer mockery.

XVI.

In the summer of 1950 the plaintiff was still making every effort to try to save the marriage and to have some happiness between the plaintiff and the defendant. At that

time the plaintiff was sixty-four (64) years of age and the defendant was fifty-eight (58) years of age and plaintiff had hoped that they might become reconciled to where the last years of their life could be lived in a better condition or state of happiness and with some peace of mind and in an effort to further that condition and in an attempt to appease the defendant and keep her from flying into fits of ungovernable temper or rage plaintiff suggested that they take a trip over the Caribbean Islands and Caribbean countries, something which the defendant had requested. Defendant had not returned any additional sums of money and still held possession of the securities at some place where she had them concealed but plaintiff had some miscellaneous funds left and these funds were used for this trip. Plaintiff and defendant spent about three weeks in making this trip but when plaintiff and defendant returned to Miami the latter part of September, 1950 the defendant stayed in Miami only several weeks and then, without any prior notice or warning or without any cause so far as the plaintiff is concerned, the defendant left Miami, Florida, left the home and went to parts unknown.

XVII.

The defendant sent no word or message to the plaintiff as to her residence and the first intimation that the plaintiff had relative to her activities was when he received a notice from General Motors Corporation that the defendant, his wife, had notified them not to pay any dividends to the plaintiff on the stocks which she had in her possession. Plaintiff then placed the matter again in the hands of his attorney and to this day he had never received any information as to the whereabouts of the defendant. He ha-

received correspondence from an attorney in Cincinnati, Ohio representing the defendant stating that she had permanently left Florida and had left the plaintiff completely and that she intended to make Ohio her home and was keeping with her the possession and control of all of the plaintiff's securities and monies.

XVIII.

Plaintiff would show unto the court that at the time of the filing of this bill he has no knowledge as to the actual place of residence or abode of the defendant although he is advised through the attorney in Cincinnati, Ohio that she is in Cincinnati, Ohio at an address which he refuses to disclose.

XIX.

Plaintiff would show unto the court that Miami, Florida is the matrimonial domicile of the plaintiff and defendant, she had no right or reason to leave Miami, Florida and to seek a domicile elsewhere and that Dade county, Florida is still the only legal residence of both the plaintiff and the defendant.

XX.

Plaintiff would further show unto the court that the actions of the defendant for the past two years, up to the time she left without reason, had been such as to make life unbearable and matrimonial relationships impossible and the defendant's constant indulgence in violent and ungovernable temper rendered not only the marital life impossible but it created such a nervous condition to the plaintiff that he has been ill during that period of time.

Wherefore, the plaintiff charges that the defendant has been guilty of extreme cruelty by the defendant to plaintiff

and also has been guilty of "habitual indulgence by defendant in violent and ungovernable temper". Wherefore plaintiff prays:

1. That this court will take jurisdiction over the parties hereto and the subject matter hereof and that pending the final hearing in this cause that the court will grant temporary injunction and restraining order restraining the defendant from disposing of any of the stocks and bonds of the plaintiff now in her possession and that the defendant shall be required, by order of said court, to redeliver said stocks and bonds to the plaintiff under such terms and conditions as the court may fix.

2. That upon final hearing plaintiff prays that this court will grant to him a divorce a vinculo matrimonii from the defendant and that in the final decree the defendant shall be directed and ordered to return to the plaintiff all of the stocks and bonds and cash found to be due by the defendant to the plaintiff on an accounting to be taken by the court.

Plaintiff would show unto the court that the interest of the defendant in the property jointly held in the estate by the entirety, half of which will inure to the benefit of the defendant upon a divorce being granted, is ample to support the defendant and that she has no further need of alimony or property settlement. Nevertheless the plaintiff hereby offers to do equity and to abide by such orders or decrees, with reference to the settlement of the property affairs, as to this court may be deemed equitable; that pending the final decree of divorce in this cause this court will enter a temporary restraining order restraining the defendant from instituting any action in any other state for the determination of her property rights or any action

concerning the matrimonial status between the plaintiff and defendant and that among other things in the event the defendant fails to obey the injunctive order of this court that this court will order and decree that any interest which the defendant may hold in property in the state of Florida over which this court has jurisdiction, including her interest in the home place, shall be subjected by the court in settlement of the damage caused by the defendant to the end that the defendant may be decreed to convey her interest in said home place to the plaintiff or in lieu that the court decree there has been a conveyance covering her interest in the home place and personal property, furniture and fixtures contained therein. Plaintiff prays for such other and further relief as to the court may be deemed equitable and proper.

Plaintiff respectfully shows unto the court that the present address and residence of the defendant, to the best of his knowledge, is at the home of her sister at 4321 Cappel drive, Price Hill, Cincinnati, Ohio, but that her address is known to the attorney purporting to represent the defendant in Cincinnati, Ohio, Mr. Walter K. Sibbald, Federal Reserve Bank Building, Cincinnati, Ohio.

Raymond C. Armstrong,
Plaintiff.

Ward & Ward,
By W. G. Ward,
Attorneys for Plaintiff.

[Duly verified.]

Plaintiff's Exhibit A

September 20, 1948.

Mr. Ray Armstrong
922 N. W. 8th Street Road
Miami, Florida

Dear Sir:

According to our conference of Monday, September 20, you have advised us that your wife has come to Miami of her own free will and you do not desire us to conduct any proceedings or service of process until you so advise us. We will follow your directions in this matter.

Very truly yours,

Ward & Ward,
By /s/ Bayard E. Heath

BEH:vam

Amendment To Bill of Complaint.

[Filed June 28, 1951.]

Comes now the plaintiff and amends paragraph 18 of the plaintiff's bill of complaint and for amendment says:

1. Since the institution of this suit the plaintiff has learned, to wit, on the twenty-seventh day of June, 1951, that the defendant now actually resides at 815 Hermosa avenue, Apartment No. 2, Cincinnati 5, Ohio; that since the filing of this suit the defendant has instituted several actions in the courts of Ohio claiming that she is a resident of Ohio. These suits are relative to certain property adjustments on property jointly owned by the parties in that state and that the defendant has announced, through her attorney, that she will not return to Florida and that she claims that she left Florida in order to establish a domicile

in Ohio. Plaintiff shows that at the time defendant left Florida in October, 1950, she did so without any provocation or without any cause and that she had no right to attempt to sever the matrimonial domicile. Therefore, pursuant to the provisions of the requirements of Section 48.04, Florida Statutes, 1949, paragraph 3, subparagraph (b), plaintiff now charges that the defendant's residence is in Cincinnati, Ohio, at 815 Hermosa avenue, Apartment No. 2, and that is her residence and address. Plaintiff further charges that pursuant to Section 48.04, paragraph 3, subparagraph (c) although the actual residence of the defendant is in Cincinnati, Ohio as above set forth that her true and legal residence is still Miami, Dade county, Florida, and that she has been absent from the state of Florida for more than sixty (60) days next preceding the making of this sworn statement, and the affiant believes there is no person in the state of Florida upon whom service of process would bind said absent defendant.

Raymond C. Armstrong,
Plaintiff.

Ward & Ward,
By W. G. Ward,
Attorneys for Plaintiff.

[Duly verified.]

Transcript of Testimony.

(Filed October 1, 1951.)

Pursuant to an order of reference made and entered herein on the twentieth day of June, A. D., 1951, by the above court, a special master's hearing was held beginning at 9:30 o'clock a. m. on Monday, June 25, 1951, in Room 1229 DuPont Building, Miami, Florida.

There were present the following: John W. Prunty, Esquire, 1409 DuPont Building, Miami 32, Florida, special master in chancery, W. G. Ward, Esquire, 1229 DuPont Building, Miami 32, Florida, attorney for plaintiff and witness for plaintiff, Raymond C. Armstrong, 922 N. W. 8th Street road, Miami, Florida, plaintiff, F. W. Bell, 5932 N. W. 6th avenue, Miami, Florida, witness for plaintiff.

Whereupon, the following proceedings were had:

W. G. Ward,

as a witness for the plaintiff, having first been duly sworn, was called and testified as follows:

"I have known Mr. and Mrs. Raymond C. Armstrong, the husband also known as Ray Armstrong and the wife as Mary R. Armstrong, for several years. The first time that I met Mr. Armstrong was in the summer of 1948 when he came to my office with reference to certain domestic troubles which he was having with his wife, Mary R. Armstrong. It seems that Mrs. Armstrong had taken into her possession quite a list of securities, together with considerable cash from the bank accounts. Some of the bank accounts were in the joint names but the securities were in the name of Mr. Armstrong personally. Mrs. Armstrong had left the home in Florida and went somewhere near Cincinanti, Ohio. I was employed to bring a divorce action on behalf of Mr. Armstrong against Mrs. Armstrong and also to institute necessary litigation for the recovery of his stocks and bonds which Mrs. Armstrong was alleged to have taken from him. These negotiations continued verbally with Mr. Armstrong and finally ended in the employment by Mr. Armstrong of Mr. Elmer L. Conway, attorney at law, First National Bank Building, Cincinnati 2, Ohio, for the purpose of instituting suit in Ohio for the recovery

of the assets which Mrs. Armstrong had taken from Florida. A suit was filed in Ohio in the case of Raymond C. Armstrong v. Mary R. Armstrong, No. A-111430 and Raymond C. Armstrong v. Mary R. Armstrong, et al., No. A-111429. At that time Mrs. Armstrong was represented in Cincinnati, Ohio by Mr. Walter K. Sibbald, attorney at law, Federal Reserve Bank Building, Cincinnati, Ohio. She was served with process at the home of her sister where apparently she had been residing since she left her home in Florida. That was the same address that appears in the order of publication and proof of publication in this cause, to wit: 4321 Cappel drive, Price Hill, Cincinnati, Ohio. Shortly after those suits were filed and in September, 1949, Mr. and Mrs. Armstrong appeared at my office, after making an appointment, and at that time they both discussed their marital difficulties and told me that they had become reconciled; that the suits would be dismissed in Cincinnati, that Mrs. Armstrong would return to Mr. Armstrong the stocks and bonds amounting to approximately $90,000, and would replace the cash which she had withdrawn from their joint accounts. Mrs. Armstrong at that time, after making these statements, requested that I give her a definite letter stating that I would acknowledge that I had been instructed to withdraw any proposed litigation in this state. Based upon that understanding and upon the instructions of Mr. Armstrong and Mrs. Armstrong given personally to me, I did dictate a letter on September 20, 1948 in the presence of Mr. and Mrs. Armstrong, and in the presence of one of my associates, Mr. Bayard E. Heath. That letter is referred to as Plaintiff's Exhibit "A". Apparently the parties did go back and live together as husband and wife because I heard nothing

more about the matter until the summer of 1950, at which time, at the request of Mr. Armstrong, I directed a letter to Mary R. Armstrong dated July 31, 1950, copy of which I submit as Plaintiff's Exhibit "B". Apparently soon after this letter was received Mrs. Armstrong departed to places unknown. I received no direct reply from that letter of July 31, 1950 until I received from Mr. Armstrong, shortly after December 1, 1950, a letter from General Motors Corporation directed to Mr. Ray Armstrong which, for the first time, advised me that Mrs. Armstrong was back in Cincinnati, was represented by the same attorney, Walter K. Sibbald, and that she was continuing to make a claim to certain of the stocks of General Motors Corporation registered in Mr. Ray Armstrong's name. I offer this letter as Plaintiff's Exhibit "C". I immediately wrote to Mr. Walter K. Sibbald by my letter of December 12, 1950, copy of which is referred to as Plaintiff's Exhibit "D", and I received an answer from Mr. Sibbald by his letter of December 19, 1950, copy of which is marked as Plaintiff's Exhibit "E" and filed in evidence. There was continual correspondence. I wrote to Mr. Sibbald again on February 9, 1951, as will show by copy of letter offered as Plaintiff's Exhibit "F", and this was answered by his letter of February 20, 1951, copy of which is attached and marked Plaintiff's Exhibit "G". Thereafter, on behalf of Mr. Armstrong, I carried on further negotiations with Mr. Sibbald attempting to settle the property affairs of these parties on an amicable basis but it was all without avail. It finally became necessary to institute a suit in this state and to obtain service by publication. I advised Mr. Sibbald of that by my letter of April 16, 1951, copy of which is attached hereto as Plaintiff's Exhibit

"H", that a divorce suit was filed and that a complete copy of the bill of complaint was being mailed to Mrs. Armstrong. We used the same address that had been used in the service of process, to wit, at the home of her sister in Cincinnati. I received a letter under date of April 27, 1951, from Mr. Walter K. Sibbald, copy of which is submitted herewith as Plaintiff's Exhibit I, in which he stated that the summons had not been received and asked me to send a copy of the bill of complaint to his office. This I did after advising him that the clerk had sent the original summons to 4321 Cappel drive, Price Hill, Cincinnati, Ohio. I then received a letter from him, to wit, Walter K. Sibbald, under date of May 22, 1951, in which he advised me that he had filed suits in the Common Pleas Court in Ohio on behalf of Mrs. Armstrong and in which he advised me that he and Mrs. Armstrong had received the summons and complaint but that he did not intend to enter Mrs. Armstrong's appearance in the bill for divorce in Florida. A copy of that letter is submitted as Plaintiff's Exhibit J. Mr. Sibbald actually at no time has advised me that Mrs. Armstrong had any other residence address than that of her sister at Price Hill, Cincinnati, Ohio, which is covered in the publication. That is the reason we did not have the clerk remail the copy because it had been mailed to the only address which had been furnished to me by her attorney or by Mrs. Armstrong.

Raymond C. Armstrong,

plaintiff, having been duly sworn, was called and testified as follows:

Direct Examination

By Mr. Ward:

Q. Your name is Raymond C. Armstrong?. A. Yes.

Q. Mr. Armstrong, you have heard me give the preliminary statements with reference to the negotiations here with Mr. Sibbald. Have you ever talked with Mr. Sibbald personally in Cincinnati? A. I did in 1948.

Q. Have you attempted to find out generally where your wife is residing up there? A. Well, yes, but that is impossible to find out.

Q. When we tried to serve her she was supposed to have been staying with her sister. Do you know any better address, or did you at the time this suit was filed know any better address than the address mentioned in this summons, at 4321 Cappel drive, Price Hill, Cincinnati? A. No, no. My wife told me when she went back that that was where she was.

Q. During that period of time Mr. Walter K. Sibbald had been representing her as her attorney, is that correct? A. Mr. Sibbald was her attorney and he advised me to get an attorney in Cincinnati which I did.

Q. When was the last time you were in Cincinnati, Ohio? A. The last time I was in Cincinnati was in May, 1951.

Q. At that time were you able to see your wife personally? A. No, I was not.

Q. What did you do up there? A. I hired another attorney by the name of Julius R. Samuels.

Q. When did you and your wife first come to Florida? A. We came to Florida in 1923.

Q. Where had you lived prior thereto? A. In Cincinnati, Ohio.

Q. When, if ever, did you purchase a home in Miami, Florida? A. I suppose the first home we purchased was in 1927.

Q. Have you and Mrs. Armstrong lived here in Miami, Florida, had this as your place of residence, voted here and been citizens of Florida since 1927? A. Yes. Well, before that we came in 1923 but we spent a few years on the Isle of Pines.

Q. Have you claimed any other place in the United States as your residence or marital domicile since 1927? A. No, I voted here and pay my income taxes from here.

Q. Did Mrs. Armstrong register or vote here? A. Yes.

Q. How old are you? A. I am 66 years old.

Q. How old is Mrs. Armstrong? A. Mrs. Armstrong is 59.

Q. At the time you were married do you recall how old you were? A. We married in 1917, I believe I was 32 years old.

Q. Were you in business at that time? A. Yes, I was in business before I was married.

Q. What type of business were you in? A. I sold buggies, harness and rubber tires.

Q. Did you own your own business? A. Yes, I owned my own business. I rented the building but owned the business.

Q. I notice, Mr. Armstrong, from the allegations of the bill that within comparatively few years after your marriage you had accumulated sufficient funds to retire and come to Florida and the Isle of Pines. Now did you accumulate that money from any inheritance or through any assistance that she gave to the marriage? A. No, she didn't bring anything whatsoever.

Q. So the assets you had when you retired in 1923 you had when you were married in 1917? A. No, I had part of that and made the rest between 1917 and 1923.

Q. Did Mrs. Armstrong work as a partner or have anything to do with the acquisition of your funds? A. No, she was just my wife.

Q. To the best of your knowledge has Mrs. Armstrong inherited any monies from any of her family? A. No.

Q. Has she ever worked and had any income herself? A. I suppose my wife worked, well, since she was thirteen years old but to help support her family.

Q. But she had nothing when you married her? A. No.

Q. What was your line of business when you came to Florida in 1923 and did you discontinue all active business? A. In 1917 I bought a business at Cincinnati known as the Bulldog Rubber Tire Company from George W. Schaeffer, and Mr. George W. Schaeffer came to Miami in 1917, I think, and went in business here. I bought him out at Cincinnati and he came to Miami.

Q. Now, Mr. Armstrong, when was the first time that you and your wife ever started having difficulty, that is in the matrimonial sense, personal difficulties? A. Well, we had difficulties from the time I bought or acquired the farm at Goshen, Ohio. My wife didn't want the farm. She thought that anyone who wanted a farm didn't amount to anything.

Q. How did she evidence that disagreement? Did she ever commit any overt acts? I notice one incident mentioned in the bill of complaint where she attempted to shoot you. A. Well, yes, she did. Of course we went together for more or less ten years and my wife, we would have quarrels and I would attempt on several occasions, after certain

thing happened, to break off going together and my wife at that time shot at me in Cincinnati. Down here was the second time, in Florida.

Q. What was her general attitude towards you with reference to criticism either privately or publicly? A. Well, I just think in later years, because when we were married she didn't interfere with the business and everything went along fine but in later years, in 1929, I was like many others, I bought stocks and had to sell them out and I was in pretty bad shape.

Q. Let us go to 1943 when you and your wife, according to the allegations of the bill, had some difficulties, at which time she insisted on certain bank accounts being put in her name. Tell the court about that. A. Well, my wife thought, I suppose, my health wasn't too good and prior to 1943 everything was in my name. The bank accounts, safety deposit boxes and of course the stocks, and my wife kept after me to put it jointly so that in case of my death she wouldn't have any trouble and expense, which I did here in Florida in 1943.

Q. That is, you put your bank accounts in your joint names? A. Yes.

Q. But you didn't put your stocks in your joint names? A. No, she kept after me but fortunately I didn't.

Q. During that period of time when she was trying to get the stocks in her name, what was her attitude towards you? A. Well, she was very nice when she wanted something and very apprehensive. As I say I put these accounts in Miami, Florida, in 1943 but the Cincinnati bank accounts really amounted to much more than down here, very much more. I didn't change those accounts until 1945.

Q. When you put these accounts in her name what was the understanding, if any, you had between you? Was she to take any active participation in your business affairs? A. The understanding was it wouldn't make any difference; that she wouldn't touch the accounts without my consent, and the only reason it was done was to protect her in case of my death.

Q. That she could get possession of everything you own? A. Yes.

Q. What happened as soon as you put the accounts in her name, did she start bickering? A. Yes, that was in 1945 that I put the accounts in our joint names in Cincinnati and I think in 1946 she wanted me to let her have charge of the farm up there. We were having trouble with the tenants, the tenants were not doing as we thought they should and she wanted me to let her take charge of the farm; that she could talk to them and they wouldn't do anything about it; that they would not quarrel with her when they would with me, but anyhow in 1946 she got into a quarrel with the tenants and they were outside calling names back and forth and I asked her to come in the house.

Q. I notice that you charge in your bill it was about that time she started criticizing you in the presence of your friends and at home? A. Well, yes, at that time we had a quarrel after we got home and of course I didn't want her making a show of things with the tenants and so she left and came to Miami. She drew $1,000 out of the bank.

Q. How long would you go back and stay in Ohio, just a month or two in the summer? A. No, we would leave in the middle part of June, and stay July, August and September.

Q. Did you ever vote up there? A. No, not since we left in 1923.

Q. Now, let's get down to the incidents which took place at Goshen, Ohio, in 1948. Tell the court what took place there. A. Well, my wife would place things, like in a closet, in such a way that if I went into that closet she would know it. Of course that home was mine just as much as hers, or more so, because I built the place and was handicapped doing it. Right before my wife left Miami she always used a corrosive substance on her face that removed the skin but it had to be used very carefully because I think it is an acid and right before we left she used this application and it burned her face very bad and between Miami and Cincinnati we stopped at three hospitals and had her face looked after, and when we got to Cincinnati, well, I would retire early. My wife would hit me and I had already retired and she started, for no apparent reason, flying into a rage. I have a niece that is afflicted with epilepsy I think, although I have never seen her in any of these things and she has a very good position and my wife started and she mentioned about this niece's affliction and said "You are all crazy" and I got up—my wife always carried a gun with her to protect herself around the house. If someone came to the door she would be back of me with a gun. She had the gun laying on the table along side of her and I took the gun and I did slap her with my left hand when she said the things about my niece, and that I was crazy and the whole family was crazy and everything like that. When we made that up.

Q. Did she pull the trigger on you that time? A. No, I had the gun—I had gotten it away from her.

Q. Now, please tell the court about the instance at Goshen —about the auction. A. Several days after that I was going to a cattle sale and community sale, well, it was to buy cattle. I got up quite early and a friend that lives five or six miles from me on a farm was to come for me. So I went up to lie down and rest because when I go to a sale I am looking around—I can't sit down, and my wife came up and accused me of looking for something. She would hide her jewelry and stuff around the house. I never gave that a thought, but she would fly into a rage.

Q. Did she ever use any profanity toward you? A. To a certain extent. It was worse than profanity. Oh, she said that she went back for revenge and that when I passed people they would spit, and she said they said "He thinks so much of money he would sell his father for a buck."

Q. She was constantly making those remarks that others had said? A. Yes.

Q. Let's go into the accusations when she actually left at that time. A. As I say I went up stairs to lie down and she came up and accused me of looking for something. Now I don't know what I could have been looking for and we had a quarrel and when I came back from the sale she had gone and she went to her sister's and then went to her attorneys.

Q. Now tell the court what happened with reference to your bank accounts. A. Well, from the Cincinnati bank account she drew out $10,800, and from the savings account she drew $700 at that time and several hundred later.

Q. Then she flew down here? A. Yes. And about $4,800 out of the safety deposit box, and then she came to Florida. Yes, she flew to Miami. Her attorney told her to take and

get everything and she flew to Miami. I had my stocks in the safety deposit box here and she took everything and I think about $500. I had only a small bank account here.

Q. And about $90,000 worth of stock and jewelry? A. Well, she may have had that here but I am positive the stocks were here and this $500.

Q. That was between July 2, 1948, and July 31, 1948 when you first came to me? A. Yes.

Q. You have seen the correspondence which I have introduced in evidence, the letters to your wife and her attorneys and the answers from her attorney. You were familiar with that correspondence at that time? A. Yes.

Q. Was that correspondence mailed at your direction? A. Yes.

Q. Tell the court what took place in September, 1948 with reference to that reconciliation. Do you remember coming to this office? What was the purpose of the joint visit to my office? A. My wife promised to return the stocks and bonds and the money in question and that we would go back and live together without any further trouble.

Q. She agreed to put the money back and return the stocks and bonds? A. Yes.

Q. Did she make such a statement in your presence? A. Yes, she did.

Q. Did she do that? A. No, she didn't. I think she intended to do that when we went to Cincinnati. We were at Goshen on our farm and we drove to Cincinnati and my wife was going to call on her sister. Two of her sisters own the "Take-Out" beer and wine place but you have to take it out of the place. She was going down there and it was the first time that she said "Kiss me goodbye" which I did and I thought we were really going to get along. I

had an appointment to take her to dinner that night and when she came back I saw there was something wrong. So we went home—we had our dinner in town and went home then to the farm and she started that night. She said "I think I had just better keep the stuff for awhile".

Q. That is when she told you just for revenge "I think I had better keep that"? A. Yes. I wanted to make investments so I made an agreement with my wife, I said "give me half of the money so I can invest that and you can have half of it." So we left the farm this day and she intended to do this and on the way in she said "I don't believe I will do that." She said that according to law I would not be entitled to half of it. I said "If it is agreeable to me why wouldn't it be all right". She said "no, I don't think I will unless I see an attorney." I said "All right, we will go and talk to an attorney about it". I said we don't want to go back to the attorney we had before so we went to another one we knew. We got in his office and she didn't mention a thing about the money but she started telling him how terrible I was. When I saw she wasn't going to talk to him about the money we left.

Q. That was in the fall of 1948? A. Yes.

Q. What happened then, did you and your wife come back to Florida and continue to live here? A. Yes, I think we came back here then and we were quarreling continuously.

Q. Now were there any occasions during that time about 1948 when you went back together? A. I believe the summer of 1950 when she left the last time. Yes, that was in October 1950.

Q. Was there any other time during that interim when she was supposed to be on a visit in Ohio and you caught

her here in Miami? A. Yes, I was down town one day and saw her in one of the Arcades and she came on back home. We were going to Cincinnati—she has the stocks and bonds in Cincinnati—and we would quarrel. I told her that I was going to Louisville to see my uncle and to be around somebody that loved me. I went to Eastern Airlines and bought my ticket. She said "What do you want to do up there". I suppose it sounds childish but I said "I want to go some place where I am loved". So she said "I want to be cuddled". She said "I was going to turn that over to you, take the ticket back". So I took the ticket back and got my money from Eastern Airlines and I wasn't home long until she changed her mind so I went back and bought the ticket again. So that night we made up again and the next day I took the ticket back and got my money again. So she insisted on going up by auto to Cincinnati and I thought when we left here that everything was going to be all right and she would turn everything over but we had no more than left here when she changed her mind. This was before that. So we went to Cincinnati and we got a room at a hotel at Mariemont, Ohio, and we did nothing but stay there. We put tenants on the farm so had no place to live and as we were going to stay quite awhile I wanted to stop at an apartment hotel. That night we had a quarrel and she said that she wasn't going back to Miami, she was going to stay up there and she went to her sisters and she stayed up there and I had to drive back by myself. I didn't hear anything from her until I heard from a neighbor and she said she saw my wife in Miami. So one day I happened to see her and I asked her if she was coming home and she said not just now. I don't know

if it was Thursday, or Friday or Saturday night I went down town to Walgreens and passing through the Arcade I saw my wife standing in there.

Q. About when was this? A. That was in 1950 before we took this trip—shortly before we took this trip.

Q. A little over a year ago? A. Well, yes, I suppose it was last September that we took the trip—about this time last year. I asked her if she was coming back to the house with me.

Q. Why did she say she was living at a hotel when you had a home here? A. She didn't give me any explanation. She said that everything was at the hotel and that she had left some of her clothes at Cincinnati and that she was going up to Cincinnati and was going back by bus. I went down the next night before she was supposed to leave and we made up and she came home to live again.

Q. Do you know about when that was? A. It must have been in September, 1950.

Q. Then what happened after that—how long did you live together? A. We took this trip through Jamaica, Puerto Rico and Haiti.

Q. When was that? A. That must have been in perhaps October.

Q. And what was the occasion for taking that trip? A. Well, she wanted to take a trip and I thought it would help us to get along.

Q. Did she take with her any of the money which she was holding? A. No, I told her I had about $1,500 in traveler's checks and she had a little insurance policy that I took out that was due—$1,000, and I told her to get that in traveler's checks. She didn't do that but I think it was her plan to spend the $1,500.

Q. When you returned from that trip, according to the allegations of the bill, your wife walked out one day and you haven't seen her since? A. The postman came, I think it was on Friday. There was 3¢ due on a letter. He said "Oh, yes, I left a letter here yesterday for your wife". I said I gave it to her. He said "She left notice with the postoffice to forward her mail to Cincinnati". My wife was in another room and she called out to the postman that it was all right. So the next day Captain Lipton called over and said he was going to go up to Fort Lauderdale in the boat and would like us to go along. I went up and told my wife and she said "I am leaving." I went out in about half an hour she came and said "I will go". So we went. That was on a Sunday. Monday night she left. When she took her clothing and luggage out of the house I don't know. When she left she left with an overnight case and I knew she had clothing at Cincinnati.

Q. Then she just left? A. Yes.

Q. Mr. Armstrong, during this period of time what has been the result of your health with reference to this constant altercation and difficulties? A. I am just a nervous wreck. That is all there is to it. That is not just saying it but that is a fact.

Q. Do you think there is any hope of reconciliation? A. If there was I wouldn't consider a divorce for a minute. There is no other woman—no one else.

Q. With reference to the property rights, I understand the only thing you have in Florida is the home place? A. That is right. I built this house.

Q. Has she any money in that house at all? A. Well, the house we did have I bought from a Dr. Bauer when we

came over from the Isle of Pines and I put it in her name. I sold that house for $3,200 then I built this house.

Q. In other words, she does have a small interest in that house from a gift? A. Well, yes.

Q. What do you figure this house is worth? A. I don't really know.

Q. Approximately how much? A. Oh, I imagine the house is worth $18,000.

Q. Including the furniture? A. No, I believe the furniture is worth $2,000 or $3,000.

Q. Now, the other property described in the bill, the farms, are all in Ohio and you are having litigation about these farms up there? A. Yes. There are two farms and I was selling off some lots by contract.

Q. That is being handled by the courts of Ohio? A. Yes.

Q. Now how about the some $90,000 or $100,000 of securities in your name, where are they? A. I don't know where they are. I haven't seen them since she took them from the safety deposit boxes.

Q. So far as you know they are not here? A. No.

Q. Did you ever give her a bill of sale? A. No, I didn't. I think when we left there was jewelry involved that I bought from a woman here, 7, 8 or 9 pieces. I bought it as an investment and on the way to Cincinnati she said "I want to keep the jewelry in my possession".

Q. Is your wife in need now? A. She has everything—the stocks and bonds and cash.

Q. She does have a half interest in the property in Ohio as well as a half interest in the home? A. I put things in both of our names.

Q. Is there any necessity for you to give your wife anything for her support? A. She has everything and I don't know how I could give her anything.

Q. Are your stock and bonds in your joint names? A. No, they are in the name of Ray Armstrong.

Q. Do you have any other property in Florida? A. Yes, I have ten acres at Ruskin.

Q. What is the approximate value of that land? A. I believe perhaps today it might be worth $100 an acre. Then I have 20 acres in the Isle of Pines which is worth probably $20 or $25 an acre at the most if you could sell it.

By the Special Master:

Q. Were there any children born of your marriage? A. No.

Q. To whom does the furniture belong? A. I thought it belonged to both of us because I bought it.

Q. These securities are still registered in your name but she has the physical possession of the certificates? A. Yes. She stopped the payments of the dividends on General Motors and I wrote to General Motors and I believe they wrote her attorney because after three months they sent me the dividends. She stopped payment on the Hudson dividends and I have their letter. I should have brought it down but they said they wanted more proof that she had a right to it and the proof was not forthcoming and they sent me the two dividends.

Thereupon,

F. W. Bell,

witness for the plaintiff having been duly sworn, was called and testified as follows:

By Mr. Ward:

Q. Do you know the plaintiff and the defendant in this case, Mr. Bell? A. Yes, sir.

Q. How long have you known them? A. Better than twenty-five years.

Q. Intimately? A. Yes.

Q. Now, during that period of time have you had an opportunity of knowing where they lived? A. Yes.

Q. Where? A. In Miami ever since I have known them except a year or two years on the Isle of Pines. That was in the 1920s.

Q. The last twenty years they have lived and been citizens of Dade county, Florida? A. Yes.

Q. Have you been in their home? A. Yes, I have.

Q. Did you and Mrs. Bell meet with them socially? A. Oh, yes, back and forth.

Q. You have heard Mr. Armstrong testify here. Have you ever had an opportunity of seeing or hearing any altercations between the two? A. Yes.

Q. What was the nature of these altercations? A. Well, that is kind of a hard thing to say because she had a chip on her shoulder and she would accuse him of squandering his money and wanting to get rid of her and that he was no kind of a business man. I have heard them not really quarreling but on the verge of it. He would say something and she would pick it up and the quarreling would begin.

Q. Now, the last few years have you ever heard her make any definite accusations or quarreling with the plaintiff

at the times you have been over at the house? A. I went over there one morning to see Ray. I didn't know she was at home but she came out of the dining room and she flew at me and she said "I am never going to come into your house again. Ray Armstrong went up to your house and defamed my character" which is not so.

Q. During all this period of time do you know whether these parties actually have been having trouble and whether she has been acting in such a way as he has testified? A. Yes, sir.

Q. You have known Mr. Armstrong for a long time. What effect has this had upon his health? A. Well, I have talked a great many times with Mrs. Bell that Ray was in mighty bad shape and that he was a nervous wreck. I have been out with him once or twice when I didn't real! know what would happen to him. That was just in the last six months.

Q. Have you seen Mrs. Armstrong back here? A. I have never seen her since that time when she flew at me.

Q. You know about the situation? A. Yes, she phoned from Cincinnati one night about 10:30 and said "I have left Ray. We had a quarrel and I am never going back to him again". That was about 1948.

Q. Did she say why? A. She said she could not live with him any more.

Q. You know that after that conversation they did try to live together? A. Oh, yes.

Q. Did you see them during that period of time? A. Yes, I did but it was the same thing over and over and even more drastic.

Q. What kind of a lady is this defendant temperamentally? A. She is very temperamental.

Q. Does she fly into a rage easily? A. Very easily.

Q. During that time when you have been around her what was her general attitude? A. She would be nice for a few minutes then she would change.

Q. When you were with them did you notice any reason for her sudden temper? A. Not a bit.

Q. Have you seen Mrs. Armstrong here in the last six months? A. No, I have not.

Q. But you have seen him here constantly, haven't you? A. Yes, sir.

Mr. Armstrong (Recalled)

By Mr. Ward:

Q. Mr. Armstrong, has your wife instituted any suits in Ohio against you for the partition of that property? A. Yes.

Q. How long ago was suit instituted? A. Just recently.

Q. And you know that she is in Ohio but you do not know exactly where she is living? A. No, I don't know where she is living but I know she is in Cincinnati. The address of 4321 Cappel drive, Price Hill, Cincinnati, Ohio, that I gave you is her sister's address where she always stays.

By the Special Master: No further questions.

There being no further evidence, the hearing was declared adjourned.

I certify that these twenty pages contain a true transcript of the proceedings held before Special Master John W. Prunty at 9:30 o'clock a. m. on June 25, 1951.

/s/ Eva W. Jones, Reporter.

Pursuant to an order of re-reference made and entered herein on the ninth day of August, 1951 by the above

court, the plaintiff in this cause having amended his original bill of complaint subsequent to the first hearing held by the master in this cause, it has become necessary that further testimony be taken, and thereupon a second special master's hearing was held at 9:30 o'clock a. m., on the sixteenth day of August, 1951 at 1229 duPont Building, Miami, Florida.

There were present the following, John W. Prunty, Esquire, 1409 duPont Building, Miami 32, Florida, special master in chancery; John P. Straessley of Ward & Ward, 1229 duPont Building, Miami 32, Florida, attorney for plaintiff; Raymond C. Armstrong, 922 N. W. Eighth Street road, Miami, Florida, plaintiff.

Whereupon the following proceedings were had:

Raymond C. Armstrong,

as a witness on his own behalf, having first been duly sworn, was called and testified as follows:

Questions by Mr. Straessley:

Q. Mr. Armstrong, since the filing of the complaint in this cause have you had any opportunity to obtain more definite information as to the address of the defendant, Mary R. Armstrong? A. Yes, sir. At the time this suit was filed the defendant, Mary R. Armstrong, had left Miami, Florida and had gone somewhere around Cincinnati, Ohio. It was the best of my information at that time that she was living with her sister at the address which I gave in the first bill of complaint. After the suit had been filed I tried to find where she was living but the only information I had was through her attorney. His letters have already been referred to. However, on or about the twenty-seventh of June, 1951, I was advised that Mary R. Armstrong had actually filed several actions in the courts

of Ohio claiming that she was a resident and citizen of Ohio and in which suit she attempted to partition certain of the property, which was jointly held in Ohio and which I have mentioned in my previous testimony and which has been covered in the complaint. In the investigation of that file by the attorney employed by me we were able to ascertain definitely her address because that was required when she tried to make the showing in the Ohio courts. I then discovered that when she left Florida in October, 1950, without any provocation as far as I know on my part, she then went to Ohio and rented an apartment at 815 Hermosa avenue, Apartment No. 2, Cincinnati, Ohio. I had no way of ascertaining this fact until this suit was filed in Ohio since her place of residence was kept secret by her attorney and by her relatives. I then made a trip to Ohio personally and found out that she was actually living at that address which was further confirmed by the fact that the telephone directory, which was issued in Cincinnati, Ohio, shortly after the fifteenth of June, 1951, showed a telephone listed in her name at that address. As soon as I found out about that I brought the matter to the attention of W. G. Ward, my attorney in Miami, Florida.

Q. Do you know, Mr. Armstrong, whether the defendant Mary R. Armstrong actually claims to be a permanent resident of Ohio? A. Yes, from the position she has taken in the litigation concerning the land she contends that she has been a legal resident and citizen of Ohio since about November, 1950, which was shortly after she left Miami, Florida. This information had not been communicated to me prior to the time I learned about it through the litigation which was filed in the Ohio courts except in so far as

I was advised through Mr. Ward and through the letters which Mr. Ward received from her Ohio attorneys.

Q. To the best of your knowledge has Mrs. Armstrong, the defendant in this case, returned to Dade county, Florida since she left here in October, 1950? A. Not to my actual knowledge. I have never seen her here and from the contention which she makes in the Ohio litigation she has been a resident of the state of Ohio ever since she left here in October.

Q. Mr. Armstrong, the facts which you have just given us are the true facts which have taken place subsequent to filing your original bill of complaint? A. Yes, that is correct.

By the Master:

Q. Since our last hearing there has been no change in the situation between yourself and your wife? A. I wrote my wife since she left and told her that if she didn't want to live here I would sell this house and we would go to California and if we liked it there we would make it our home. I didn't want a divorce. If she doesn't want to live with me there is no other way. Everything I had she took. She promised numerous times to return them but when the time came she changed her mind.

Q. And she refused to come back to you? A. She never answered the letter. I know she received it because there were papers in it that she had to sign and they were returned but she didn't answer.

There being no further evidence, the hearing was declared adjourned.

I certify that these three additional pages contain a true transcript of the proceedings held before Special Master John W. Prunty at 9:30 o'clock a. m. on August 16, 1951.

/s/ Eva W. Jones, Reporter.

Special Master's Report.

(Filed October 1, 1951.)

To the Honorable Judges of the Above-Entitled Court, in Chancery Sitting:

This cause was referred to the undersigned, as special master, on the twentieth day of June, 1951, and after an amendment to the bill and entry of a decree pro confesso against the defendant, was re-referred to the undersigned, as special master, by order dated the ninth day of August, 1951. The testimony was taken before me on August 16, 1951, and a transcript of the testimony is attached and made a part of this report.

Analysis of the Facts.

The parties hereto, as husband and wife, lived in Dade county, Florida, for many years and were registered voters here and owned and maintained a home in Miami, Florida. In October of 1950 the defendant left the plaintiff and left the home and went to Cincinnati, Ohio, or parts of Ohio near Cincinnati. The parties had separated at least one time prior thereto and one particular instance was in September of 1948, at which time the defendant left Miami, Florida and took with her, and without the consent of the plaintiff, the contents of the safety deposit vault consisting, among other things, of bonds and stock certificates of approximately $100,000.00 in value, all registered in the name of the plaintiff. In addition thereto she took large sums from the joint bank accounts and upon reconciliation she agreed to return the stocks and bonds and the cash. Correspondence was introduced in evidence to show this.

However, defendant did not return the stocks and bonds, giving first one excuse and then another, and after living with the plaintiff for approximately two years under ex-

tremely unpleasant circumstances, as far as the plaintiff was concerned, the defendant then left without cause and went to Cincinnati, Ohio, or somewhere near that city. She left without notice and apparently still has the stocks and bonds in her possession.

At the time this suit was filed, the exact residence of the defendant was not known to the plaintiff although she was represented by counsel in Cincinnati and considerable correspondence took place between the attorney for the plaintiff and the attorney representing the defendant from Cincinnati. This correspondence reflected an effort to adjust the property rights and if possible to bring about some reconciliation which was all to no avail. The exact residence of the defendant was not disclosed in the correspondence although the testimony shows that copies of the bill of complaint were actually furnished to the attorney in Cincinnati at his request.

The records disclose, however, that the original notice was not accepted at the address given, which was the address of the defendant's sister in Cincinnati, Ohio, at a place where she had previously made her abode when the parties had been separated.

Pending this litigation and after this cause had been referred to the undersigned, as special master, the defendant filed a suit in Cincinnati, Ohio for the purpose of seeking to partition lands in Ohio, which are held in the estate by the entirety by plaintiff and defendant and in said suit for the first time she was forced to disclose her exact address.

When this information was obtained, the bill of complaint was amended and a new service sent to that address which she claimed as her legal place of abode, and after

that service was perfected an order of re-reference was then entered. The testimony of the plaintiff, corroborated by the testimony of Mr. Fred W. Bell, established clearly that the defendant was guilty of extreme cruelty to the plaintiff and that it reached the point to where it seriously impaired the health of the plaintiff.

The testimony shows that at the time of the marriage of the plaintiff and defendant, the plaintiff was a man of considerable means. The defendant had no property at the time of the marriage, nor has she inherited any nor accumulated any since that time in her own right.

Testimony shows that as a part of a studied and deliberate plan on the part of the defendant, she, from time to time, induced the plaintiff to place certain of his properties in their joint names. We only have the plaintiff's version of this inducement, and the defendant has failed or refused to enter her appearance in this court, although without question, she has been made fully aware of the contents of the complaint and the subject matter of the suit.

According to the testimony of the plaintiff (see transcript 8) there was no intention on his part to make a gift to the defendant of a half interest in the home place in Miami, Florida. He testified that he was to have unlimited control without any interference from her whatsoever, and the right to buy and sell any interference from her whatsoever, and the right to buy and sell other properties resulting from a transfer without any interference. This testimony in the absence of any contradictory claims by the defendant is sufficient to overcome the presumption of a gift.

There are stocks and bonds in the approximate amount of $100,000.00 which were still in the name of the plaintiff.

but, the certificate evidencing the same, the defendant took without authority. It is the master's opinion that these stocks and bonds belong to the plaintiff.

There are certain items of real property in the state of Ohio, which the plaintiff placed in the joint names of husband and wife. Litigation is now pending in Ohio, and no attempt is made in this report to determine the difficulties between the parties with reference to those properties.

With reference to the property in the state of Florida, it now appears that there is only involved the home place, which is described as follows:

Lots 12 and 13, block 11 of Spring Garden, according to the plat thereof, recorded in Plat Book 5, page 38, of the public records of Dade county, Florida.

Together with the furnishings and fixtures contained therein.

This property was purchased solely through funds of the husband, the plaintiff, but the title placed in the names of the plaintiff and the defendant, creating an estate by entirety. This was the homestead, and was treated by the plaintiff as his home. There is no evidence of any gift by the plaintiff to the defendant of any interest in the home, and this conveyance of the half interest in the home seems to come under the same category as the transfer of other properties entered in the joint names of husband and wife.

The master feels that the evidence sufficiently disclosed a scheme or artifice on the part of the defendant, the wife, to obtain control and possession of her husband's estate without having any real intent at the time to maintain a home or in good faith to continue the marital relations. The plaintiff's testimony in this regard is certainly corroborated by subsequent event.

Her actions show a total disregard of any responsibilities and duties as a wife in relationship to her husband, and sustains the conclusion that she has for many years attempted to gain possession and control of her husband's estate by any means or methods at her command regardless of good faith, or regardless of the legality of such moves.

Your master is aware of the existence of Section 689.15 Florida statutes, which provides, among other things, that property held in the joint names of the husband and wife becomes vested one-half each as tenants in common upon the entry of a decree of divorce, but the statute is not self-executing and is not mandatory.

In several instances the Supreme Court of Florida has upheld the power of the chancellor to make an equitable disposition of the title to property held in the estate by entirety. See Kollar v. Kollar, 21 So. 2d, 356, 155 Fla., 705; and Lovejoy v. Lovejoy, 36 So. 2d, 192, 160 Fla., 566; Hargett v. Hargett, 24 So. 2d, 305, 156 Fla., 730; and O'Connell v. O'Connell, 45 So. 2d, 882; and Kerivan v. Fogal, 156 Fla., 92, 22 So. 2d, 584. The equitable circumstances in this case are so persuasive, it is therefore the opinion of your master that any presumption of a gift of a half interest in said home to the defendant has been overcome in equity.

The record in this cause shows that litigation is now pending in the state of Ohio where the plaintiff is seeking to recover from the defendant the possession of the stocks and bonds, which were wrongfully taken by the defendant from the possession of the plaintiff. In Florida a wife may be guilty of conversion or even embezzlement of her husband's properties, and the Supreme Court of Florida held in State v. Herndon, 27 So. 2d, 833, 158 Fla., 115, as follows:

"It is not to be inferred from what has been said . . . that every case in which one spouse appropriates the

property or funds of the other may be classified as larceny. The element of intent must be one of the controlling factors in determining larceny here or elsewhere. The statute (Section 811.01, Florida statutes 1941, F. S. A.) provides that 'whoever commits larceny by stealing of the property of another ' ' ' ' shall be punished, etc. Funds of one spouse used by the other to purchase good and clothing or family necessities would not be construed as larceny, but here the charge is for appropriating $5,000 of the wife's money. In the state of the law pointed out here we think it necessarily follows that even spouses must observe the difference between mine and thine, and if they fail, they do so at their peril".

The question of the wife's alimony, if any, cannot be determined at this stage of the proceeding. At the present time the wife of the defendant has in her possession large sums of money belonging to the plaintiff and approximately $100,000.00 in stock and bonds. In addition thereto, she has a half interest in properties in the state of Ohio and other funds and properties not fully accounted for. I assume that this will be the subject matter of the litigation in Ohio, and that proper disposition will be made by the courts of that state.

Findings

The court has jurisdiction over the parties and over the subject matter.

The plaintiff has established by competent and sufficient testimony the allegations contained in his complaint. The defendant has been shown to be guilty of extreme cruelty by the defendant to the plaintiff, and the plaintiff is entitled to the entry by the court of a final decree of divorce a vinculo matrimonii.

The bonds and stock certificates registered in the name of the plaintiff, the possession of which has been gained by the defendant against the consent of the plaintiff, are the property of the plaintiff, and the plaintiff is entitled to the entry of an appropriate decree directing their restoration to the plaintiff.

The real property in Dade county, Florida, the record title to which appears in the name of both parties and which is described in the complaint as:

Lots 12 and 13, block 11 of Spring Garden, according to the plat thereof, recorded in Plat Book 5, page 38, of the public records of Dade county, Florida,

Together with the furnishings and fixtures contained therein,

has not been shown to be a gift by the plaintiff to the defendant, nor has it been shown that defendant contributed anything whatever to the acquisition or retention of said property. The plaintiff is therefore entitled to the entry of an appropriate decree of this court determining and vesting the complete legal and equitable title to said property in the plaintiff as of the date of the acquisition of said property by the plaintiff.

The defendant is not entitled to receive alimony from the plaintiff under the facts and circumstances presented in this case.

Recommendations

1. That a final decree of divorce be entered divorcing the parties each from the other a vinculo matrimonii.

2. That no award of alimony be made to the defendant.

3. That the defendant be ordered and directed to restore to the plaintiff the bonds and stock certificates registered in the name of the plaintiff and now held by the defendant.

4. That the legal and equitable title to the real property located in Dade county, Florida, described in the complaint and referred to in this report, be established and determined as having been vested in the plaintiff as of the date of the purchase of the same by the plaintiff.

A special master's fee in this cause has been settled by an agreement between the attorney for the plaintiff and your master.

Respectfully submitted,

/s/ John W. Prunty,
Special Master in Chancery.

Final Decree.

(Filed October 2, 1951.)

This cause comes on to be heard upon the bill of complaint, the testimony taken before the special master, the Honorable John W. Prunty, and upon the master's report.

It appears that due and proper service by publication has been effected against the defendant, Mary R. Armstrong, and that a decree pro confesso has been duly and properly entered for failure of said defendant to plea or answer in this cause.

Upon consideration of the above; it is, therefore, considered, ordered, adjudged and decreed:

1. That this court has jurisdiction over the parties and the subject matter involved herein;

2. That the equities are with the plaintiff.

3. That a decree of divorce a vinculo matrimonii is hereby entered in favor of the plaintiff, Raymond C. Armstrong, also known as Ray Armstrong, against the defendant, Mary R. Armstrong.

4. That Raymond C. Armstrong, also known as Ray Armstrong, is hereby decreed to be the owner of that certain property situate in Dade county, state of Florida, and more particularly described as follows:

Lots twelve (12) and thirteen (13), block eleven (11) of Spring Garden, according to the plat thereof, recorded in Plat Book 5, at page 38 of the public records of Dade county, Florida.

Together with the building situate thereon and all furniture and fixtures contained therein.

And the said Mary R. Armstrong, her heirs, successors, personal representatives, grantees or assigns, her agents, servants or attorneys or anyone on her behalf, be and the same are hereby enjoined and restrained from claiming or asserting any claim of title to said property from the date of this decree, and the said title be and the same is hereby quieted and forever set at rest in the said Raymond C. Armstrong, also known as Ray Armstrong, as against any claim of the said Mary R. Armstrong or anybody claiming by or through her.

It appears from the evidence and is found by the master that the defendant's action shows a total disregard of any responsibility or duty as a wife in relationship to her husband, and sustains the conclusion that the said Mary R. Armstrong has for many years attempted to gain possession and control of her husband's estate by any means or methods at her command regardless of good faith or regardless of the legality of such moves.

It appears that the husband has been deprived of stocks and bonds and moneys by the illegal action of the wife. The testimony shows and the court so finds that the defendant has wrongfully taken from the possession of the plaintiff

stocks and bonds approximately in the aggregate amount of between $90,000 and $100,000 which are in the name of the plaintiff; and in addition thereto, the wife has taken large sums of money from the joint bank account of the plaintiff and defendant.

In Florida a wife may be guilty of conversion or even embezzlement of her husband's property as held by the Supreme Court of Florida in State v. Herndon, 27 So. 2d, 833, 158 Fla., 115. The court, therefore, finds that the stock certificates and bonds registered in the name of the plaintiff, the possession of which has been taken by the defendant against the consent of the plaintiff, are the property of the plaintiff, and the defendant is hereby directed and specifically ordered to return the said stock certificates and bonds to the plaintiff within fifteen (15) days from the date of the entry of this decree or be subject to an order for contempt and such other relief that may be deemed proper by this court.

This court takes recognition of the fact that litigation is now pending in the state of Ohio relative to the recovery of these stocks and bonds as well as the settlement of other matters concerning property rights between the parties. This court recognizes that the courts of Ohio will have the ultimate determination of the question of property rights where the property itself is in the state of Ohio, but, in that regard, this court makes a specific finding that both the plaintiff and the defendant herein were citizens and residents of the state of Florida and had been for many years, the matrimonial domicile was the state of Florida, and that when the defendant left the matrimonial domicile in October of 1950, she did so without cause or without the legal right to separate and set up her own domicile. Under

those circumstances the court finds that the wife defendant, Mary R. Armstrong, did not have the right to separate and claim a separate legal domicile and in truth and in fact, her domicile was that of her husband.

This court, therefore, finds the defendant has not come into this court in good faith or made any claim to the equitable conscience of the court and has made no showing of any need on her part for alimony. It is, therefore, specifically decreed that no award of alimony be made to the defendant and that the legal and equitable title to the real property above described was vested in the plaintiff as of the date of the purchase of the same by the plaintiff and the said legal title to said property be and the same is hereby vested in fee simple absolute in the plaintiff, Raymond C. Armstrong, also known as Ray Armstrong, without further deed or conveyance from the defendant.

The defendant, Mary R. Armstrong is further enjoined and restrained from interfering with the person or the property of the plaintiff.

The court retains jurisdiction for the purpose of enforcing the terms and conditions of this decree.

Done and ordered at Miami, Florida, this the second day of October, A. D. 1951.

s/ Joe N. Morris,
Circuit Judge.

[Duly certified.]

EXHIBIT 4.

Depositions of Sadonna Naylor, Fred M. Bell and W. G. Ward.

Sadonna Naylor,

of lawful age, being by me first duly cautioned and sworn, deposes and says as follows:

Direct Examination.

Q. (By Mr. Ward) Would you state your name, please? A. Sadonna Naylor.

Q. Where do you reside, Mrs. Naylor? A. 970 Northwest Eighth Street road.

Q. Are you a resident of Dade county, Florida? A. I am.

Q. How long have you been a resident of Dade county? A. Well, on and off, since 1920, but I have been here steady for the last quite a few years. I don't know just how many.

Q. Have you ever lived in Cincinnati, Ohio, or in the immediate vicinity? A. No, sir.

Q. Do you contemplate making any visit to Cincinnati or the immediate vicinity thereof within the next two or three months? A. No, indeed.

Q. Do you know the plaintiff and defendant in this action, Mary R. Armstrong and Raymond C. Armstrong? A. I certainly do.

Q. How long have you known them? A. Ever since they began to build—about ten years ago.

Q. What was your first contact with the Armstrong family? A. Well, naturally, when they were building I owned two lots alongside of them. I had another lot further up, and they were building, and the war was going on, and of course we talked about the building things going on. So the war came on and kind of put a stop to it, when they

corraled everything. So the Armstrong folks got friendly and they said they would help me when I got ready to build. I didn't build all these years. I sat on the land chiefly waiting because stuff was high. I think it was about 1949 when I started in. Well, as I said—I don't have a date. Of course the papers in the bank can give you that.

Q. Approximately when? A. Approximately 1949 and 1950—between that time.

Q. This home you built, is that where you reside now? A. I do.

Q. Where is that in relation to the Armstrongs' home? A. Why, it is about 150 feet away. Of course there are three lots in between.

Q. Did the Armstrongs reside there when you built it? A. Yes.

Q. Both Mr. and Mrs. Armstrong? A. Yes.

Q. In the course of your contact with the Armstrong family, have you come to know them socially? A. Yes; I came to know them pretty well.

Q. Have you ever been in the Armstrong house? A. Quite a good deal, especially when I began to build again—kind of bringing over the charts and plat—what do you call it—the plans of the house that I intended to build.

Q. Who would you bring them over to? A. To both. Mrs. Armstrong would be there. As a rule I generally asked Mr. Armstrong's advice about it because he had already built, and he could make any corrections, or anything that was advisable that would be more convenient in the way to build—like putting in the carporte. I had it on the wrong side. He thought it would be advisable to put it in and line it up with the kitchen.

Q. Was Mrs. Armstrong usually present? A. Always.

Q. Always? A. Always.

Q. How often did you go over to the Armstrong house with these plans? A. As the occasion came up. I can't say exactly. Sometimes I would be over two or three times a week. Sometimes I wouldn't see them probably for a week. I wouldn't like to bother them unless I had occasion to go there. I didn't want to bother them. If something called for a correction, or something that he could advise me about, I would go to see them.

Q. During the course of these conversations, was your conversation directed to Mr. Armstrong? A. No; after Mr. Armstrong got through saying what he had to say about it, we generally chatted a while—just ordinary conversation.

Q. What would Mrs. Armstrong be doing while you were discussing the plans with Mr. Armstrong? A. To be frank, she had a great habit of interrupting just when I was tense and trying to understand what Mr. Armstrong was saying. When we were talking about some technical things in the way of plans or building, she would interrupt with ordinary conversation—chit-chat about her sister or family life. That really was out of line entirely. It didn't call for it at all. I was waiting many a time for him to finish what he had to say, and sometimes it was unfinished because Mrs. Armstrong would start to talk social talk that I wasn't really interested in. And I was in trouble then, in a way, on account of the engineers finding a soft spot on there. I didn't know whether they would be able to build without putting pilings down, and I naturally wanted to listen to what Mr. Armstrong would say. She generally held me up with small talk.

Q. Is that during the conversations you would have with Mr. Armstrong about your plans, or after you finished your conversation? A. No; she would interrupt any time, and of course I tried to be patient and listen, and be courteous, but sometimes it was pretty hard.

Q. Did you ever have any conversation with Mrs. Armstrong about her house? A. Well, not to any great extent. There might be something mentioned incidentally, but no real conversation.

Q. What would you mention incidentally? A. She didn't seem to care very much—

Mr. Sibbald: I move to strike the conclusion of the witness—"She didn't seem to care."

Q. (By Mr. Ward) Did Mrs. Armstrong express to you, or ever tell you, that she did not care for the house?

Mr. Sibbald: I think I will object to that. You are leading the witness.

Q. (By Mr. Ward) Did you ever have any conversation with Mrs. Armstrong about the furnishings in the house? A. Well, yes; she showed me all or most of the things—the different things she had.

Q. What things? A. Well, some of her antiques and some of her linens, silverware, glassware that she had. And she claimed they were very old. They had come down the line, and her folks had a castle in Ireland.

Q. Wait a minute. In her conversations about the furniture, did she ever tell you where she had gotten the furniture, the antiques, and glassware? A. Well, she said it was left to her. It was old stuff, and of course I could see it was old.

Q. Did she ever tell you who had left it to her? A. It was from the family.

Q. Whose family? A. She didn't say. She said from her family.

Q. Her family? A. I have to try to remember how she said it. Well, I remember about how she showed me some bedspreads and crocheted work. She said that that was from her grandmother. I don't remember about the antiques so much—saying who it was from.

Q. Did you ever have any other conversation with Mrs. Armstrong about her family? A. Just small talk—telling me she had eight sisters, and they didn't have any children, except one.

Q. Did she ever tell you where her family had come from? A. What's that?

Q. Did she ever tell you where her family came from? A. Well, yes; she did say they had come from Ireland.

Q. Did she say anything else? A. She said they had a castle.

Q. Who had a castle? A. Her folks in Ireland had a castle, or some kind of castle—I forget just how she said it. It is several years ago, and she told me these things incidentally, and she mentioned it more than once.

Q. Mentioned what? A. About her being brought up in a big home—in a castle in Ireland, and where she came from.

Q. Did she say they still had the castle? A. She said they had had it in the past. I don't remember how she phrased it; but she mentioned having a castle.

Q. Did she ever say she lived in the castle? A. I don't think she did—that they had a castle there—where they came from—her folks had it. I think that's the way she put it.

Q. Going back to your building the house. What was the last conversation you had with Mrs. Armstrong? A. Well, the last conversation I had with her—I didn't have a conversation. We had trouble, because I came there late one afternoon—

Q. When was that? A. Well, that was during the summer I was building.

Q. When? A. In 1950, as close as I can remember. And they had just come along. They had come home, and I generally spoke to the folks whenever I saw them. If I could avoid going upstairs I did. I didn't want to waste any more time than necessary. I showed Mr. Armstrong a sketch and he corrected something about the porte which we were going to have, and we were also talking about the foundation.

Q. This was the foundation of your house? A. The house I was building. And Mr. Armstrong, he started to think about it before he answered, and he was kind of slow, and Mrs. Armstrong began to talk about some little social chit-chat. She had been in the habit of doing that very much. I can't listen to two people at once, so I put up my hand to hold her still so I could hear what Mr. Armstrong was explaining to me. She got up and she stood there for a minute, and went upstairs and acted kind of peeved. I didn't think anything of it. Mr. Armstrong explained about the things and then I thanked him, and went away.

I came back the next day, after I saw the builder about it; and said what he thought was right and what wasn't right. I came in and went upstairs in the house.

Q. In whose house? A. Mrs. Armstrong's house. I went to the house generally—and I asked where is Mr.

Armstrong: She said he wasn't there. I thought that was funny, because his car was downstairs. I thought she was maybe mistaken, and we began to talk, and all of a sudden, I don't know—she turned on a violent temper and began to get excited, and—

Mr. Sibbald: I will object to the conclusion of the witness.

Q. (By Mr. Ward) What did she do and say? A. She flared up in a violent temper, and she seemed to just go out of her head, and she—

Mr. Sibbald: I move to strike her reference that she had a violent temper, and appeared to do so-and-so. I move to strike that as a conclusion of the witness.

The Witness: Well, she got very excited.

Mr. Sibbald: I move to strike that too.

Q. (By Mr. Ward) What outward physical appearance did she show, that you could ascertain by looking at her? A. She became very excited.

Mr. Sibbald: I move to strike that.

The Witness: Why, you could see it.

Mr. Sibbald: I move to strike "You could see it."

Q. (By Mr. Ward) What did she say to you? A. "How dare anyone shut me up?" "My husband would never shush me. I have been married to him so long, and he wouldn't dare shush me." I said "Mrs. Armstrong, no one said anything to you." She kept ranting and kept on in that strain, and—

Q. What did she keep saying to you? A. She kept talking about this being shushed, and would not stand for it. I said that no one shushed her. There was nothing meant by it—nothing said and done. She just kept on. She was just in hysterics.

Mr. Sibbald: I move to strike. "She was just in hysterics."

The Witness: Indeed she was. I was crying.

Q. (By Mr. Ward) What do you mean? A. She had me all unnerved. I couldn't stand it. I looked at her, and she was so uncontrolled. I didn't know what to make of her. I said, "There was no call for that." She just kept it up. I couldn't stand any more. I left there crying terribly, and there was no control to her terribly vicious temper.

Mr. Sibbald: I move to strike the reference to vicious temper.

The Witness: Well, it was. She was just up in arms.

Mr. Sibbald: I move to strike. "She was up in arms."

Q. (By Mr. Ward) Was she talking in a loud voice? A. Indeed she was, at the top of her voice.

Q. Was it her normal voice? A. No; indeed. She generally talked easy—never loud.

Q. Was that a loud voice? A. Yes; indeed.

Q. Was she waving her arms? A. Yes; she was all uncontrolled.

Mr. Sibbald: I move to strike "uncontrolled."

The Witness: No normal person goes into a tempest like that.

Mr. Sibbald: I move to strike, "Goes into a tempest," and so forth.

The Witness: Well, she was in a terrible temper. She was up and down.

Q. (By Mr. Ward) Was she walking up and down the room? A. She sat down and got up again. She had me scared.

Q. Did she ever threaten you with any violence of any kind? A. Not in so many words; but her actions showed it—that she was in a temper. She was uncontrolled in her temper. She just kept talking about how anyone dared say anything to her like that.

Q. Would you say that her voice was a little above her normal voice?

Mr. Sibbald: I object to your leading the witness.

The Witness: Well, it wasn't only a little above normal, it was loud. Why, you could hear her across the canal, the way she was talking that day to me, and that's something for her. Why—well, I was going to say there weren't neighbors around to hear it, and that's too bad.

Mr. Sibbald: I move to strike the last reference—"that is too bad."

The Witness: Counselor, for that matter Mr. Armstrong must have heard it because he wasn't in the house at the time.

Q. (By Mr. Ward) You do not know whether he heard it or not? A. Well, I saw his clothes around, and you know, I had been coming to the house so much—I would go there on account of the building—he must have been around.

Q. Did you see Mr. Armstrong after you left the house? A. I didn't see him, but I know his car was there, and the clothes that he wears when around the house were there.

Q. What did you do after that argument? A. She upset me so, as I said. I was hysterical and crying. I couldn't hardly see my way out. I left when I saw that she kept on. There was no end to it. She kept repeating the same thing over and over.

Q. What did she keep repeating? A. About being slapped—how anyone dared do that to her. I kept trying

to placate her. No one had said anything. No one had done anything. And so, finally, when she didn't calm down, and she still stayed in that same temper, there was nothing to do. I found my way out and left.

Q. Did you ever go back again? A. No, sir; I would be scared to go there; and I would like to tell you of a little thing, counselor, that happened after I had built the house.

Mr. Sibbald: I object to that.

Mr. Ward: You cannot volunteer information. I have got to ask you the question.

The Witness: All right.

Q. (By Mr. Ward) Did you ever have any other conversation with Mrs. Armstrong after that date? A. Not after that, but something came up before.

Q. Before what are you referring to? A. Before the other thing happened—before the trouble.

Q. Before the argument? A. Yes.

Q. How long before? A. Well, several months, I think.

Q. What was this incident? A. I was shopping downtown for a range for my house. I was coming out of Richard's and I ran into Mrs. Armstrong. I knew she had been away, because she had flown up to Cincinnati several times that summer—four or five times. I said, "Well, I am glad to see you back." And that is all. I said, "I suppose I will be seeing you," and I went away and stayed downtown shopping. I thought naturally she would be going up home. When I came back up home I passed Mr. Armstrong's place to go to my house, and Mr. Armstrong was standing outside. I mentioned to him that I am glad Mrs. Armstrong is back. He said, "Mrs. Armstrong I didn't see her." He didn't know anything about it.

Q. When was that? A. That was a couple or three months before this other trouble happened. I don't know the date, but it was before I bought my range, and I can get the date of the range, and I can go back to that, if it is necessary. Well, then I thought, I said, "Mr. Armstrong, she is probably shopping," and I went home. I didn't think any more about it. I came by the next day some time. I asked Mr. Armstrong—I said, "Well, Mrs. Armstrong is back?" He said, "No." I said, "Well, that is funny." I let that day go by—I don't think it was until the next day that I still heard she wasn't there, and I spoke to him about it. I said, "Don't you think you ought to notify the police?" "That is peculiar. She is in town because I talked to her, and she is not here." He said, "No." I said, "There must be something wrong because Mrs. Armstrong carries quite a bit of money around." I have been shopping with her when she would sit in the car and give Mr. Armstrong a $10 bill and there were 20s and 10s—a roll of money.

Mr. Sibbald: I object to that. It is wholly immaterial.

The Witness: Well, she never showed up for days.

Q. (By Mr. Ward) After you saw Mrs. Armstrong downtown at this particular time, when was the next time your saw her at the home of the Armstrongs? A. Well, I don't think I saw her for probably a week after that.

Q. Did you have any opportunity to observe the Armstrong house every day? A. I didn't go in every day, but I would see her downstairs in the garden, or around, and I talked to them or waved to them. But the next time I saw her, that was outdoors after this happened, and she and Mr. Armstrong were both downstairs after this incident.

Q. Which incident are you talking about? A. About meeting her on the street and not coming home.

Q. How long was that, after that, that you saw her? A. Probably a week. She had gotten home by then.

Q. Did you have any conversation with Mrs. Armstrong after that? A. I said to her, "Well, I guess it is good to be home." She said, "Yes," but very coolly.

Q. Did you have any other conversation with Mrs. Armstrong? A. She didn't seem friendly. I didn't say any more. I went on about my business.

Q. Have you seen Mrs. Armstrong since the incident in the summertime when you had the argument with her in the summer of 1950?

Mr. Sibbald: I object. She just testified to that.

The Witness: After that trouble when she carried on?

Q. (By Mr. Ward) Yes. A. I don't think I went to the house after that.

Q. Have you seen her around the house? A. She was coming and going so much I don't think I did.

Q. You have not seen her since that time up until the present time? A. No; not to speak to or go there or go near there.

Q. Have you seen her at that house? A. Yes; she was around.

Q. When? A. Oh, she was around for several months after that.

Q. After that time, did you see her? A. Well, I was so busy I didn't pay attention. Of course, she came out and I would see her then, but not to go up and to the house.

Mr. Ward: Your witness.

Cross Examination.

Q. (By Mr. Sibbald) After this argument that you had about being shushed, you were not on friendly terms? A. Well, I wasn't unfriendly, because she had been very friendly. I was coming to them for advice and help. I didn't have anything against them. I didn't understand then, and I don't know why she should have gone into such a temper. There was nothing there. She knew I was in trouble. You know, when you are in trouble your mind is not on social chit-chat.

Q. Now, this shushing incident was in her home, was it, not? A. Yes.

Q. What sort of house did the Armstrongs have out there? A. Well, I consider it a very nice place.

Q. Are you acquainted with values in that neighborhood? A. In real estate values?

Q. Yes. A. Well, I won't go so far as to say that. I had a rough idea, but it goes up and down. During the war it was pretty high. I doubt if it is now. I know the neighbor on the other side of me, she has a house much older than mine, and not near as well built. She was offered $25,000. I doubt if she would get half of that today.

Q. You say you have two or three lots on the street? A. I had two extra lots adjoining the Armstrongs, besides the one I built on.

Q. And do you still have them? A. No.

Q. Did you sell them? A. I pretty near gave them away.

Q. When was that? A. Oh, well close to a year, somewhere around there.

Q. And how much frontage did you have? A. One hundred feet.

Q. What did you sell the hundred feet for? A. Six thousand dollars, and the commission came off of that.

Q. How much frontage did the Armstrongs have? A. I think he originally had 50, and then he got another 50, so I think they have 100 feet.

Q. How large a house is the Armstrong house? A. I wouldn't know. I know it is a large house. If you mean by measurement, I don't know.

Q. How many rooms? A. I would have to count. I know they have two sitting rooms, and I guess two bedrooms, and that porch and the living room and dining room. I guess that's all.

Q. Does it have a little boathouse? A. Yes; they have a boathouse.

Q. What kind? A. A very nice one. He put an awful lot of money in it.

Q. You know what it cost you to build your place? A. Yes.

Q. How many rooms do you have? A. I have four—two bedrooms, a living room, and kitchen.

Q. What did it cost you to build your house? A. With the big porch—$9,000.

Q. Did Mr. Armstrong have a boat? A. I don't know. I never saw one there. I did hear at one time that he may have had one. That I wouldn't know, because he allows other people to put their boat in there.

Q. If he had a boat, you knew nothing about it? A. Not personally; no.

Q. How about the contents of the Armstrong house? Can you tell us about that? A. Well, I can say that it is nicely furnished, and there is all kinds of antique silver, glassware, jars and vases, and things like that. I don't know

the value of them. I never went into detail. I just look at them. I am not very curious in that way.

Mr. Sibbald: I think that is all.

Mr. Ward: No further questions.

(Reading, subscribing and notice of filing waived.)

(Thereupon the deposition was concluded.)

Fred W. Bell,

of lawful age, being by me first duly cautioned and sworn, deposes and says as follows:

Direct Examination.

Q. (By Mr. Ward) Would you state your name, please? A. Fred W. Bell.

Q. Where do you reside? A. 533 Southwest Sixth avenue.

Q. Are you a resident of Dade county, Florida? A. Yes.

Q. How long have you lived here? A. About 47 years, from 1905.

Q. Have you ever lived in or around Cincinnati, Ohio? A. No, sir.

Q. Are you contemplating a visit to Cincinnati or that immediate vicinity within the next three or four months? A. No, sir; I don't ever expect to leave the state of Florida.

Q. Do you know the plaintiff and defendant in this action, Mary R. Armstrong and Raymond C. Armstrong? A. I do.

Q. How long have you known the Armstrongs? A. About 25 years, approximately. It might be a little more or a little less.

Q. Has that been socially, or in a business way? A. Socially, no business.

Q. That is with both of the Armstrongs? A. Yes.

Q. Have you visited the Armstrongs in their home? A. Yes.

Q. Over what period of time? A. Ever since they lived in Miami.

Q. How long have you lived in Miami, and how long have they been here? A. They must have been here around 25 years, I imagine.

Q. How often did you visit in their home? A. Through the winter while they were here—10 days—a couple of times a month—sometimes oftener.

Q. During this period of time that you visited with the Armstrongs have you ever had an opportunity to observe any altercation or quarrels between Mr. and Mrs. Armstrong? A. You can call it quarrels in a way. I have heard some pretty stiff arguments.

Q. What was the nature of these arguments? A. What do you mean—what was the nature of them?

Q. What were they arguing about? A. Well, about Mr. Armstrong wasn't a good businessman. He was getting into trouble with his tenants, and didn't know the value of a dollar.

Q. Did Mr. Armstrong provoke any of these arguments?

Mr. Sibbald: I object to that question.

Mr. Ward: I will rephrase it.

Q. (By Mr. Ward) Now, in the last two or three years have you heard Mrs. Armstrong make any direct statements to Mr. Armstrong? A. How do you mean?

Q. Concerning his business affairs or business management? A. Of his business affairs?

Q. Yes. A. Yes.

Q. What were these statements? A. Well, she objected to what he was spending on the home; objected to what he was spending or proposed to spend on the farms; he was

giving the tenants too much and not getting enough returns from the tenants.

Q. Now, when were these statements made; do you remember? A. Oh, I can't give you any specific dates. They were over there, up at the farm. They had gotten back from there some time during the summer or fall—sometimes during the winter.

Q. Has Mrs. Armstrong ever directed any statements to you in a loud voice? A. What do you mean—directed any statements to me?

Q. Have you ever had any conversation with Mrs. Armstrong? A. Alone?

Q. In the presence of Mr. Armstrong, or other people, I mean when she was not carrying on a normal social conversation? A. As I said, she was arguing about what she would do, what he shouldn't do. She was very arbitrary.

Mr. Sibbald: I move to strike the last expression—"very arbitrary"—as a conclusion of the witness.

The Witness: I think she was arbitrary.

Mr. Sibbald: I move to strike that statement.

Q. (By Mr. Ward) Did she ever make any statements to you pertaining to a conversation purportedly had between you and Mr. Armstrong? A. Well, I don't know just how to answer that.

Q. Well, did she ever discuss you or Mr. Armstrong ever making derogatory remarks about her?

Mr. Sibbald: I object to that question as leading.

Q. (By Mr. Ward) Mr. Bell, in the last year or two have you ever had any conversations with Mrs. Armstrong about her marital relations with Mr. Armstrong? A. The last time I seen her. You have got the testimony right in there.

Q. I want you to tell me what those conversations are. A. The last time I seen Mrs. Armstrong I didn't know she was here, and I dropped by one morning, going by there.

Q. Going by where? A. I was going by their house.

Q. When was that? A. It was 1959 or so, about the time she left. That was the last time I seen her.

Q. Go ahead. A. I went in to see Ray. I didn't know she was here. I went in and Mr. Armstrong says, "Mary is here." I says, "That's nice." I says, "Hello, Mary." She came out shy—didn't greet me—hello. I says, "I am glad to see you back." I made some remark. I don't remember what it was, and I invited them to come up. She says, "I am never coming up into your house. I never want to go into your house." I says, "I am sorry to hear that. What's the reason?" She said, "Mr. Armstrong said things about me—defamed my character—to you." I said, "Mary, that's not so. He never said one word against you in any way, shape, or manner," and she was very hostile to me, and I was hurt bad.

Mr. Sibbald: Just a minute. I move to strike the reference, "She was very hostile and I was hurt bad."

The Witness: Well, I was. I don't care whether you cross it out or what. I said that. You asked me a question and I have told you that.

Mr. Ward: He is not asking you the question.

Q. (By Mr. Ward) Was there any further conversation at that time? A. She kept talking. I can't remember all she said. The only thing I do remember is she said that Armstrong wanted to get rid of her. That was all that I can remember distinctly—just talking and talking.

Q. Have you seen Mrs. Armstrong since that time? A. No, sir.

Q. Have you had any conversation with Mrs. Armstrong? A. Not since she left that night for Cincinnati.

Q. When was that? A. When was it?

Q. Yes. A. I think it was 1950 or 1949. It was when they had their run-in there. Mrs. Armstrong can give you the date of that.

Q. Do you know? A. I can't say whether it was 1949 or 1950—whenever she left him.

Q. Whenever she left him when? A. To go to Cincinnati. Whether it was in 1949 or 1950, I couldn't say for sure. She called me up one night about 10 o'clock.

Q. What was that conversation? A. She told me she left Mr. Armstrong.

Q. Did she give any reason for it? A. No specific reason. She said she couldn't live with him any longer. Can I add a little information of what I said?

Q. Yes. A. She told me she had left him. "I will probably lie down there in two or three days," she said, "and you be very careful of what you say to him."

Q. Did you ever see the Armstrongs after that conversation? A. That was over the phone. That was prior to when I met her at the house. She came here after that.

Q. After what? A. After she telephoned she left.

Q. Did you go over to the Armstrongs' house after that? A. Did I?

Q. Yes. A. Not for quite a long time.

Q. When was the next time you went to the Armstrongs' house? A. The month after.

Q. Was Mrs. Armstrong there? A. No; she was not.

Q. Do you know of your own knowledge when she had left? A. I couldn't tell you that.

Q. Over the period you have known the Armstrongs you have had an opportunity to observe Mrs. Armstrong's temperament? A. Yes.

Q. What was her temperament?

Mr. Sibbald: I object to the question as calling for a conclusion of the witness.

Q. (By Mr. Ward) From your observation, what was her temperament? A. She was very temperamental.

Q. How did she outwardly show that? A. She would get mad.

Q. At whom? A. Mr. Armstrong.

Q. Can you offer any particular incident that you know about? A. No specific one—just conversation over the house, or over the farms, or their investments in Cincinnati.

Q. When you were with the Armstrongs and they had these quarrels, would you notice any reason for the quarrels?

Mr. Sibbald: I object to the question as calling for a conclusion of the witness.

Mr. Ward: Please read the question.

(The pending question was thereupon read by the reporter as above recorded.)

The Witness: No; I couldn't see what they would be quarreling about. I would think it was a small matter.

Mr. Sibbald: I move to strike the answer.

The Witness: They were quarrels, but I couldn't tell what they were about.

Q. (By Mr. Ward) They were just quarrels? A. That's right. I was there once or twice—generally in the daytime. I would go around to the back. They were generally out in the yard in the back part of the house. I went there once or twice and I heard them arguing in there. I couldn't

hear what they were saying, but I could hear their loud voices. I would turn and go to the front and they would let me in.

Q. Did Mrs. Armstrong ever make any statement to you about her family? A. She was always talking about her family.

Q. What about her family? A. How much money were were making; the line of business they were in.

Q. Anything else? A. Some of her kin folks or in-laws were in the slot machine business or the pinball business, and so on and so forth—the liquor business.

Q. Did you have any conversation with Mrs. Armstrong about the furniture in the house? A. No; never had any.

Q. Did she ever make any statement regarding that furniture? A. No; only spoke about that was a nice piece, and something of that kind.

Q. Do you know of your own knowledge who purchased that furniture in their house? A. In their general conversation I could tell—

Mr. Sibbald: I object to what he heard.

Q. (By Mr. Ward) Do you know yourself who bought that furniture? A. Only from what they have said.

Q. What who said? A. Mr. and Mrs. Armstrong.

Q. What did Mrs. Armstrong tell you? A. Mr. Armstrong had purchased that and that and the other thing.

Q. Specifically what? A. One piece I remember—some kind of vase or something that had been in some residence in Cincinnati, that Mr. Armstrong bought. Someone was breaking up housekeeping or selling out their stuff and moved away.

Q. How about any of the other antique furniture they had? A. Only that Mr. Armstrong had purchased that.

Q. Who said that Mr. Armstrong purchased that? A. Mrs. Armstrong.

Q. How about the china and glassware in the house? A. She would say she picked up this piece here—bought this and bought that. Sometimes she would tell where he got it, and he would give a little history of where and how they got it. I never heard her say she bought a piece of antique stuff. She always said Ray picked them up.

Q. Now, do you know of your own knowledge of Mr. Armstrong's financial condition? A. What do you mean?

Q. His business ventures. A. Business interests?

Q. Yes. A. Nothing, only his farms and stocks—he used to tell me for years about buying General Motors stock and some other stocks—I don't recall.

Q. Did you ever have any conversation with Mr. and Mrs. Armstrong, or overhear any conversation about the stocks and property that he had? A. Well, I heard her arguing against his buying stocks. That's all.

Q. Do you know of your own knowledge if Mrs. Armstrong ever contributed anything to the purchase of these?

Mr. Sibbald: I object to the form of the question as calling for a conclusion.

(The pending question was thereupon read by the reporter as above recorded.)

The Witness: She never said she wanted them. She always argued. Mr. Armstrong bought them.

Mr. Sibbald: I move to strike the question.

Q. (By Mr. Ward) Bought what? A. Stocks, farms, and different things he bought.

Q. Do you know of your own knowledge whether Mrs. Armstrong ever had any money of her own? A. Never heard of her having any.

Q. Do you know if she ever inherited any money from anyone? A. Never heard of her inheriting any. From what she said I don't think she had any money.

Mr. Sibbald: I move to strike that last answer.

Q. (By Mr. Ward) What did Mrs. Armstrong say about Mr. Armstrong's business ventures and her contribution thereto? A. Well, she didn't contribute anything.

Mr. Sibbald: I move to strike the answer.

Q. (By Mr. Ward) Did she ever tell you she had contributed anything?

Mr. Sibbald: I object to the question as leading, and an effort to cross examine your own witness.

The Witness: No; she never did.

Q. (By Mr. Ward) Did you know Mr. Armstrong prior to his marriage? A. No, sir.

Q. How long had they been married when you first met Mr. and Mrs. Armstrong? A. I don't know how long they had been married.

Mr. Ward: Your witness.

Cross Examination.

Q. (By Mr. Sibbald) As I understand it, Mr. Belt, you had been a rather frequent visitor in the Armstrong home, and they in your home, over the full period of 25 years? A. Yes.

Q. Now, you have answered Mr. Ward that they would have pretty stiff arguments between the two of them? A. Yes.

Q. Did that extend over the full 25 years? A. No; it was only the last few years.

Q. How long would you say that that sort of thing had gone on? A. Ten or twelve years.

Q. Well, this matter of buying stocks, when did you first hear about that? A. Oh, I couldn't tell. That's been in conversation for a number of years.

Q. Does it go back as far as— A. Prior to the building of their new home on Thirty-first street.

Q. Did it run back to the early '30s? A. No; I don't think it went back as far as that.

Q. Now, when you say they had arguments about their tenants—the tenants of what properties? A. Their farm property outside of Cincinnati.

Q. Those arguments extended how far back? A. Oh; I should say ten years.

Q. Can you tell us just what was said about the tenant in those discussions? A. I couldn't tell the exact words they were arguing about, but it was that the tenants weren't doing this and the tenants were doing that—Mr. Armstrong was giving them more than the tenants was entitled to. If she was doing it she would do it so-and-so. She could do it better than he could.

Q. Did she show some knowledge about what was being done on the farm? A. I don't know about her knowledge. All I know is what she said.

Q. You said something that in these arguments there was some objection as to what was spent on the home? A. Yes.

Q. Was that an argument about what was spent in building the home? A. Yes.

Q. In those discussions did you hear anything said about the fact that the house that was previously in Mrs. Armstrong's name had been sold and the money put in this house? A. What was that?

Mr. Ward: Read the question back, please.

(The pending question was thereupon read by the reporter as above recorded.)

The Witness: No.

Q. (By Mr. Sibbald) Did you know them before they moved out to the present residence? A. No—you mean this house?

Q. Yes. A. Oh, yes.

Q. Where did they live previously? A. Thirty-first street.

Q. Did you know that that residence was in Mrs. Armstrong's name? A. I did not.

Q. Now, with reference to that time you went by and saw Mrs. Armstrong, when she accused Ray Armstrong of going to your house and defaming her character, you had not told her anything about what he had said at your house? A. I hadn't seen her.

Q. She had not been present at your house when there was any defamation of her character?

Mr. Ward: I am going to move to strike the question as being improper in form. There has been no testimony about that.

Q. (By Mr. Sibbald) Mr. Bell, was Ray Armstrong in your house when there was anything said about Mrs. Armstrong's character? A. He never said about her character.

Q. Was there anybody present, other than yourself and your wife, and Mr. and Mrs. Armstrong? A. No.

Mr. Ward: I move to strike the question and ask for a clarification. You are trying to import by your question that there were remarks made defaming her character.

The Witness: Mr. Armstrong never said one iota about Mrs. Armstrong.

Q. (By Mr. Sibbald) I will ask the question this way: Did Mrs. Armstrong relate to you something about some defamation of her character—if she had related that to you—is it not a fact that the only person who could have told her of that was Ray Armstrong? A. That woman would have said any damned thing. I don't give a continental what you say—when I went in there that morning that woman was a wild woman.

Mr. Sibbald: I move to strike that portion of the answer as entirely unresponsive and a conclusion of the witness.

The Witness: He never said anything. He never said one word about that woman.

Q. (By Mr. Sibbald) Mr. Bell, why do you exhibit the hostility you do towards Mrs. Armstrong? A. I am just telling you, and you asked me the question. I am just telling you what she said and what transpired. She was very hostile about it.

Q. Have you not shown that you are inclined to be a bit hostile? A. No; I am just emphatic. That's all.

Q. Was it in that same conversation that morning that she told you that Mr. Armstrong wanted to get rid of her? A. That's what she said.

Q. Now, Mr. Bell, when was that—was it as early as 1948? A. No; I can't give you the date—after she had left him and then came back. Whether it was 1948, 1949 or 1950—I can't tell you when it was.

Q. Well, was it before or after you say she telephoned you from Cincinnati? A. That was afterwards.

Q. You say it was after she had telephoned you that she had left Mr. Armstrong? A. I don't know—a few months—it wasn't too long.

Q. Now, in the telephone conversation when she talked to you from Cincinnati, you said to us that you were told she couldn't live with him any longer. Was that all she told you? A. That is all; that she left and they separated.

Q. You said that she couldn't live with him any longer? A. I didn't know whether she said couldn't or wouldn't. She said, "I am never going to live with him again."

Q. Did she, in that conversation, say anything about her physical condition at that time? A. No.

Q. Did she at any time tell you of the beating he gave her? A. No.

Q. Now, in your conversations about the things that were in the house, you made some reference to some vase, and you say that she told you Mr. Armstrong had purchased this or that. Did she ever talk to you about attending the auctions? A. They went there—Mr. and Mrs. Armstrong bought this, that and the other thing.

Q. That she had gone with him? A. Yes.

Q. Where were these articles? A. That I don't know.

Q. Mr. Bell, when did Mr. Armstrong acquire the monkey? A. Oh, God! I would have to think back a long, long time on that.

Mr. Ward: I am going to put in an objection to any testimony about a monkey, and move to strike any answer given in relation to a monkey as not being relevant to direct examination.

Mr. Sibbald: Please read the question.

(The pending question was thereupon read by the reporter as above recorded.)

The Witness: Well, it was several years before they moved from the other house and built the new home on

Eighth Street road to Ninth Street road. Just what year that was I can't remember.

Q. Did you have occasion from time to time after that to see the monkey? A. Oh, yes.

Q. Was it a male or female monkey? A. I don't know.

Q. When was the last time you saw it? A. Well, that's just before they left to go north the last time—whatever date it was that they had the break-up that spring. That was the last time I seen the monkey.

Q. That was the last time? A. Yes.

Mr. Sibbald: I think that is all.

Redirect Examination.

Q. (By Mr. Ward) Mr. Bell, did you ever hear or see Mr. Armstrong threaten any physical violence to Mrs. Armstrong? A. No, sir.

Q. How about during the quarrels your have testified about? A. Well, nothing that threatened, or anything of that kind.

Q. What did he do? A. What do you mean—what did he do?

Q. When you observed them, what did he do? A. He told her to be quiet.

Mr. Ward: That is all.

Recross Examination.

Q. (By Mr. Sibbald) Is that all you heard him say? A. Well, all I remember. He might have said more, arguing back and forth—I don't remember what he said to her.

Q. Mr. Bell, you are quite anxious to help Mr. Armstrong, are you not?

Mr. Ward: I am going to object to that question as being irrelevant and immaterial.

The Witness: I don't know as I am any more for Mr. Armstrong than you would be for a friend of yours. I don't think Mrs. Armstrong treated Mr. Armstrong right, or never did.

Q. (By Mr. Sibbald) Mr. Bell, is Mr. Armstrong the only friend of yours connected with this case? A. The only one.

Q. How about Mr. W. G. Ward? Is he not a long-time friend of yours? A. He has been my attorney for a number of years.

Q. How many years? A. Oh, I think since 1919 or 1920.

Mr. Ward: I object to this whole line of testimony and move the answers be stricken as being irrelevant and immaterial to this cause.

Mr. Sibbald: That is all.

(Reading, subscribing and notice of filing waived.)

(Thereupon the deposition was concluded.)

W. G. Ward,

of lawful age, being by me first duly cautioned and sworn, deposes and says as follows:

Direct Examination.

Q. (By Mr. Ward) Please state your name. A. W. G. Ward.

Q. And your address, Mr. Ward? A. 1229 DuPont Building, Miami, Florida.

Q. Are you a resident of Dade county, Mr. Ward? A. I am.

Q. How long have you been a resident of Dade county? A. Since 1917.

Q. Are you contemplating making a trip to Cincinnati or its immediate vicinity within the next three or four months? A. No plans whatsoever.

Q. Are you acquainted with the plaintiff and defendant in this cause, Mary R. Armstrong and Raymond C. Armstrong? A. I am.

Q. When did you first meet the Armstrongs? A. About the year 1948, as I recall it.

Q. And what was the nature of that meeting? A. Well, the first meeting had to do with, I would say, matrimonial difficulties between Mr. and Mrs. Armstrong, and conditions concerning the position of stocks and bonds, whatever they were, in the name of Mr. Armstrong, and of which Mrs. Armstrong had taken possession of and was holding against his request. There were some other factors involved concerning property they had in Ohio, and certain joint accounts; jewelry and things of that type—the usual general dispute between married people.

Q. What is your occupation? A. I am an attorney-at-law.

Q. After the first discussion you had, what took place after that? A. Well, there were some suits which I was advised had been filed in Cincinnati through an attorney Mr. Armstrong had employed. I believe his name was Conway. I testified to these exact names and dates in my testimony which I gave in the state court case. I would have to refresh my mind as to the exact dates and names. Mr. Conway filed a suit up there in Cincinnati for the recovery of those stocks, and I had been employed by Mr. Armstrong here to prepare for filing of the divorce proceedings here at that time.

Q. Now, at the time of these discussions did you have any contact with Mrs. Armstrong, or anyone representing Mrs. Armstrong? A. Oh, yes, not with Mrs. Armstrong at that time individually, but my correspondence. My

correspondence, as I recall, was through Mr. Conway in Cincinnati. I may have written to Mr. Sibbald at the time you are asking about. I am not too clear on that of any concrete date. Mr. and Mrs. Armstrong came to my office—in this office in which I am now sitting—and we discussed the matter at that time, and they advised me that the litigation in Cincinnati was either disposed of or would be disposed of; and they decided to go back together, and that this settled their disputes with reference to their property rights, and that she would return the securities and place them back down here, and they would continue to live together and forget their difficulties. She said she wanted an assurance from me, however, that even though I had been instructed to file lawsuits against her on behalf of Mr. Armstrong, that I would have to confirm to her that Mr. Armstrong had instructed me to withdraw my potential suits.

Q. Did you prepare such a letter? A. I did, and a copy of that letter was introduced in evidence in the trial of the Dade county Circuit Court case.

Q. I hand you herewith a document purported to be a copy of a letter dated September 20, 1948, and ask you to identify same? A. That is a copy of the original which I dictated in the presence of Mr. and Mrs. Armstrong in my office. They waited for it to be typed off.

Q. Who received the original of that letter? A. Let me explain that my associate assistant at that time was Mr. Heath and he worked with me in practically all these matters, and was familiar with these meetings.

The conference that I had with Mr. and Mrs. Armstrong was, the best I can recall, right around noon, or else I had

to get to an appointment in court. Mr. Heath was present with me at that time—at the time Mr. and Mrs. Armstrong were here. At that time I was not having any conference that he was not fully advised of, and that he did not co-operate in. The letter was dictated here and I left, and that is the reason Mr. Heath signed the letter on my behalf on behalf of the firm. However, that letter is my dictation.

Q. Now, Mrs. Ward, at the time you had the conference with Mr. and Mrs. Armstrong, did Mrs. Armstrong have the securities you have referred to in her possession? A. That I could not say for sure—whether she had them with her in her pocketbook.

Q. Did she ever tell you whose securities those were? A. Well, not in so many words. That is what the whole fight was about—to get his securities back from her. They were registered in Mr. Armstrong's name and they had been taken out of a safe deposit vault, according to what both parties told me. She claimed she had a right to hold possession of them; and he claimed she did not. That was what the fight was about. I assumed, at the time she was in my office, that she was not going to turn over the possession of them until she got this letter.

There was another question that was involved, in which I think she wanted assurance on more than any one thing. Under the Florida law a wife does not have the right to take the property of the husband without his consent.

Mr. Sibbald: Right there I interpose an objection. I move to strike the answer as a conclusion of the witness.

The Witness: That was the nature of the discussion, and I assured her verbally that as far as I was concerned, I

was through with the case. I had nothing more to do with it.

Mr. Sibbald: I move to strike the portion in which the witness attempts to say what the Florida law is.

Q. (By Mr. Ward) After this conversation with Mr. and Mrs. Armstrong, did your have any further dealings with the parties? A. Yes: I believe that last conference I had was the date of that letter, which was September, 1948. I believe I saw Mr. Armstrong maybe casually in the street. Whether he came into my office prior to 1950, I do not recall. I may have had some matters of business with him. Nothing, however, to do with the marital relationship. I believe there was one discussion we had here about some property—some lots or something he had up in Ohio.

Q. When was the next time you had any discussion with Mr. Armstrong relative to his marital difficulties? A. As I recall it, around the middle of December, 1950. Those dates are reflected in the correspondence which then started.

Q. At that time did you direct a letter to Mrs. Armstrong? A. I did. It was either to Mrs. Armstrong, or to Mr. Sibbald as her attorney. I would have to look at the letter.

Q. I hand you herewith a copy of a letter dated July 31, 1950, and ask you if you can identify same? A. Yes: that is the original letter I wrote, which I previously testified to in the Florida case.

Q. Is this a copy of the letter? A. That is a carbon copy of the letter.

Q. Did you ever receive the original of that letter back from Mrs. Armstrong, or back from the mail? A. No.

Q. Did you ever receive any correspondence relating to that letter? A. Not from her. I did from Mr. Sibbald. That will show by a series of letters which I had back and forth relative to the same subject matter, which I think I introduced in the original case in Dade county.

Q. Do you have in your possession at this time the original of these letters in your possession, or the possession of your office? A. The ones I received from Mr. Sibbald, or else the originals were put in the state court case of Florida. I do not recall. The originals which I sent Mr. Sibbald would naturally be with him.

Q. Mr. Ward, what was the purpose of the letters written between you and Mr. Sibbald? A. Copies will show we were trying to find some way to get the parties together; make a settlement; adjust their marital affairs—just the usual correspondence between attorneys, and we did not get any place with it.

(Informal discussion off the record.)

Q. (By Mr. Ward) Mr. Ward, I hand you herewith a group of letters, numbering nine in number, and ask you if you can identify them? A. The first was the letter of July 31, 1950. This is a copy, directed to Mary R. Armstrong; and a letter of December 1, 1950, which I wrote to Mr. Ray Armstrong. The next was the letter of December 12, 1950, which letter I sent to Mr. Sibbald Federal Reserve Bank Building, Cincinnati, Ohio. There is the letter of December 19, 1950, which was Mr. Sibbald's letter to me in answer to my letter of December 12. There is a rather extensive letter that I wrote on February 9, 1951, to Mr. Sibbald, and there is his answer to me on February 20, 1951; and my letter to Mr. Sibbald under date of April [illegible], 1951, and his answer under date of April 27, 1951. It was

in that letter that he requested, and I sent him an additional copy, or another copy of the bill of complaint which had been filed in the Circuit Court of Dade county, Florida, for divorce; and his letter under date of May 22, in which he advised me that he did not intend to enter Mrs. Armstrong's appearance in the Florida court. That was a series of correspondence from July 31, 1950 through May 22, 1951, which is his last letter to me. The originals of the letters which I received from Mr. Sibbald were deposited and filed in evidence in the Circuit Court, Dade county, case.

Q. What is the number of that case? A. 140311-H. And as attorney of record in the case I explained that they were being offered simply for showing knowledge by her attorney that this lawsuit was pending in Dade County, Florida, and not for the purpose of binding either client who attempted negotiations by counsel to settle their affairs.

Mr. Ward: I offer these for identification as one exhibit, being Defendant's Exhibit 1.

(The documents referred to were thereupon marked "Defendant's Exhibit No. 1 for identification," and are attached to the original of this deposition.)

The Witness: I believe that is the last correspondence Mr. Sibbald and I had in that transaction. There may have been a subsequent letter but I do not recall. I do not recall any in my files, unless Mr. Sibbald has some other correspondence.

(Informal discussion off the record.)

The Witness: I would like to make one additional correction. Under date of October 4, 1951, I directed a letter to Mr. Sibbald at Cincinnati, Ohio, in which I enclosed a

copy of the final decree of divorce entered by the Circuit Court of Dade county, Florida.

Q. (By Mr. Ward) Mr. Ward: how did you attempt to obtain service on Mrs. Armstrong in the divorce proceedings in Florida? A. Well, in two ways. First, I verified records in the litigation which had been filed in 1948 or 1949 up there in Cincinnati, in which the address was mentioned as being that which was put on it.

Q. The address of whom? A. Of Mrs. Mary Armstrong. I believe it was the place of her sister. I attempted to contact, or did contact, Mr. Conway—I believe at that time either Conway or Samuels. I do not remember which it was—who was in the picture then, and then I discussed the matter with my client, Mr. Armstrong, and we made an affidavit then based upon the last known address we were able to find. Mr. Sibbald no doubt probably had the right to not tell me what her address was, or where she was living.

I sent a copy to him and it was later on that I think the record will show that in some of the proceedings in Cincinnati, that we then found she had established another address, in which she had given a specific address, and the affidavit was amended; process for the service publication was therefore amended and that was issued at the last address.

The original records in the case in the Circuit Court, and as reflected and found by the master, and set forth in the master's report, will show that according to his analysis of the facts and the record, that after the first service of publication had been concluded and a default entered, the matter was referred to Mr. John W. Prunty, as special master, under our procedure here, and it was after the

matter had been referred, based upon the address of the defendant being that of her sister's residence in Cincinnati, Ohio—

Q. When you speak of the defendant, you are speaking of the defendant in the Florida case? A. Yes. I then received information that the plaintiff in that case, Mrs. Armstrong, filed a suit in Cincinnati for the purpose of seeking to partition certain lands in Ohio. In that suit she gave her new address, and the bill of complaint was amended and an entirely new service was then sent to her at the address which she gave in her partition suit filed in Ohio.

Now, the records in the Circuit Court did not disclose that that second bill was ever returned, for the first notice was returned and accepted. It was after that time.

Mr. Sibbald: I do not like to interrupt, Mr. Ward, but I am going to move to strike the portion of the answer referring to returned and accepted.

(Informal discussion off the record.)

The Witness: I think that perhaps the objection to the use of the word, accepted, was well taken. What I intended to imply was that if was returned. The registered post office certificate showed that it was not accepted or received and that the party was not at that address. But the second one was, according to our records, not returned. It was thereafter that I mailed Mr. Sibbald a copy of the bill.

Q. (By Mr. Ward) Which is reflected in the letters offered as Defendant's Exhibit 1? A. That is correct. And we did not proceed with the master's hearing under the first service, but waited for a proper period of time and then took the reference to the same master.

Mr. Ward: That is all.

Cross Examination.

Q. (By Mr. Sibbald) Mr. Ward, did you draw the complaint in this divorce action here in Dade county? A. Yes; I dictated it.

Q. Did you dictate that after conferring with Mr. Armstrong? A. Oh, yes.

Q. You conferred about the contents? A. Yes; I got the information from him, and after I talked with Mr. Fred Bell.

Q. The allegations made in the complaint then were based solely upon what Mr. Armstrong, or perhaps Mr. Bell told you? A. As I recall it, I believe they were the only two I discussed the matter with before the suit was filed. That is plus my own prior knowledge of the situation by conversation with Mr. Armstrong some year and a half prior thereto, and of course, Mr. Sibbald, plus what seemed to me to be certain undisputed facts between the parties, as covered by our correspondence. I am not going into what the disputed facts were. There were certain undisputed facts relative to the property—the location and so forth.

Q. I call your attention to my letter to you of April 3, 1951, and to the second sentence in the first paragraph of that letter, wherein I wrote you, "The important thing is the written agreement in Mr. Armstrong's handwriting was exhibited after that visit to your office and while they were in North Carolina, on their way to Cincinnati. It does not pertain only to jewelry."

Did you, before you dictated and filed that complaint, discuss with Mr. Armstrong the agreement referred to in that sentence? A. Yes; he told me about that agreement, and did not agree with your discussion about that letter.

I had never seen the letter. As a matter of fact, I have never seen it to this day.

Q. Well, in any event, when you drew the complaint you were acting upon information given to you by Mr. Armstrong, that he had no agreement with his wife that she might retain control of these stocks? A. He told me he signed some kind of agreement on the trip, between here and Cincinnati, without knowing what he was doing—being based upon certain representation she had made. I did not see that it had anything to do with the question of right of divorce or who actually owned this or that. It might have had a bearing had there been an attempt to get out a criminal warrant, which we did not do.

Q. Now, aside from the matter of that agreement, did you discuss with Mr. Armstrong in detail what transpired between the two of them at or shortly before their separation in the latter days of June, or early days of July, 1948? A. Yes. Well, that was before their separation—are you talking of before they came back? I think they came to my office in September, 1948.

(Informal discussion off the record.)

The Witness: Yes; I discussed it.

Q. And the allegations of the complaint as to that separation you put into the complaint, based upon statements made to you by Mr. Armstrong? A. Yes; plus the correspondence I had with Mr. Conway, and the allegations in the Cincinnati litigation which had been filed. I took all that into consideration.

Q. In that discussion of that first separation in 1948, did Mr. Armstrong tell you anything about the beating that he gave Mrs. Armstrong before they separated? A. No.

Q. Now, when you drew the complaint, particularly with reference to the allegations of the complaint as to the registration in October of 1950, did you draw the complaint basing it upon his statements to you as to what had occurred? A. Actually I had no personal knowledge.

Q. Did he, in those discussions with you, while you were preparing the complaint, tell you about Mrs. Armstrong's physical condition when she left Miami in October, 1950? A. I do not recall anything about her physical condition.

Q. He did not tell you that just before she left on that Sunday night, that he had given her a beating? A. No; he did not. I believe they had some constant quarrels. Who was beating who, or whose fault it was—I got his version of it. I might say that she never said anything to me when she came in here in September, 1948.

Q. Mr. Ward, that matter was referred to whom? A. John W. Prunty.

Q. How long have you known him?

Mr. Ward: I am going to put in an objection to that as being irrelevant and immaterial to this cause.

The Witness: I have known Mr. Prunty; I guess—I would say, I guess ten years. He has been in the army four or five years. He was connected here. He was assistant state attorney here. I believe he was assistant county solicitor—at least he was connected with the legal department of the state. I knew him casually. I do not have much criminal work myself.

Q. (By Mr. Sibbald): Before any testimony was taken before Mr. Prunty, did you discuss that case with him? A. No; we have nothing to do with the appointment of the master.

Q. That is not my question. My question is: Before you took any testimony with him, did you discuss the matter with him—the details of the case? A. No; we set the case for appointment, and before, or about the time that we were about to take the testimony—I think it was then that I learned through Mr. Armstrong or Mr. Samuels about the filing of the partition suit. I never was satisfied that some place, somewhere, we could not locate Mrs. Armstrong up there, although we did the best we could do.

Q. You never asked me where she lived, did you? A. I am not accustomed to asking opposing counsel for that type of information because I know what the answer would have been. We could have engaged in the very expensive routine of hiring a detective, but Mr. Armstrong was not only in bad financial straits, he was practically wholly without money because of the fact that his income had been withheld due to these actions, and was not in a position to spend the money that I otherwise would have spent on a detective.

Q. Right here may I ask you what income was withheld from him at that time? A. Some of the stock dividends from General Motors, and we were not in any position to be spending a lot of money in unlimited investigation. We felt, in good faith, that the service upon the sister's residence, which she had used as her residence, would do. That is all our law requires—that we use our best effort. So, when I got this information, which was after the suit was filed in the Circuit Court of Dade county, I felt that the only thing for me to do in order to exercise the greatest amount of care, which I tried to exercise, to eliminate any question about whether we had exercised all the care we

could possibly do, we filed the amended bill and suspended all master's hearings.

Q. Just to clear the record, it is a fact that you took the testimony of the witnesses upon the first reference? A. Some of the testimony—not all of it. Some of the testimony was taken, and then on the second hearing we called Mr. Bell and Mr. Armstrong, and with Mr. Prunty, each word of the testimony was reviewed and gone over, and re-sworn to.

Q. Now, up until that time, had you, aside from appearing before Mr. Prunty and examining the witnesses, had any discussion with him about the case? A. No. When an ex parte case is referred to the court—well, I had no idea that Mr. Prunty would be the special master; and the lawyers who are appointed special masters have no preliminary notice of it. Mr. Prunty may have called me and asked me when I wanted to take testimony—something of that nature.

Q. After the testimony was completed, both on the first and second order of reference, did you discuss with Mr. Prunty, the master's report? A. Oh definitely. Yes, sure.

Q. Did you discuss in detail with him what the master's report would contain? A. No; the only question Mr. Prunty asked me about was as to the disposition of the homestead here, and he asked me to give him a memorandum of the law which I considered would be in support of the judge's decree, to award the homestead to Mr. Armstrong, and I gave him three or four citation authorities which I considered to be sufficient, and as I recall it—I forget what judge entered the decree—we have ten of them down here—I think we submitted an authority or two to that court.

Q. Aside from what you discussed relating to that, did you take any other part in the preparation of the master's report? A. I do not recall, Mr. Sibbald, whether I did or did not.

Q. Let me ask you this question: Did you prepare a draft of that report? A. No, sir.

Q. Now, I call your attention to the last paragraph of Mr. Prunty's report wherein he uses these words, "A special master's fee in this cause has been settled by an agreement between counsel for plaintiff and your master." When did you have that agreement with Mr. Prunty? A. That is customary here, on these ex parte cases, rather than being no contest on it, they are not bound on divorce cases on a standard rate of pay. That was a customary fee. I do not remember what it was.

Q. My question was: When did you have an agreement with Mr. Prunty? A. I imagine it was about the time he was ready to file the report. Either that matter is arranged between counsel and agreed to, or set by the court.

Q. You say you do not recall what the amount was? A. I think it was either $200 or $250. That is a customary fee in such cases. I do not recall the exact amount. It was not paid then. It was paid some time afterwards.

Q. Did you pay that, or did you have Mr. Armstrong pay it? A. Mr. Armstrong. I had been paid nothing in the case. Mr. Armstrong has paid the expenses, and that is all.

Mr. Sibbald: I think that is all.

Redirect Examination.

Q. (By Mr. Ward) How long have you been practicing law? A. Since about the first of June, 1923.

Q. And what Bar Associations are you a member of? A. Dade County Bar Association; Florida State Bar Association, and the American Bar Association.

Q. Have you ever been an officer in any of those associations? A. Yes; an officer in all of them.

Q. What offices have you held? A. Well, vice-president and director in the Florida Bar Association for a couple of years. I was vice-president two or three times in the Dade County Bar. I have never been a director or officer of the American Bar, although I have worked on special committees with them.

Mr. Ward: That is all.

Mr. Sibbald: No further questions.

(Reading, subscribing and notice of filing waived.)

(Thereupon the deposition was concluded.)

PLAINTIFF'S EXHIBIT B.

July 31, 1950

Mrs. Mary R. Armstrong
922 N. W. 8th Street Road
Miami, Florida

Dear Mrs. Armstrong:

Several years ago you and Mr. Armstrong called at my office and had a discussion with reference to the settlement of your difficulties and adjustment of your property rights. It was my understanding at that time that you had agreed to return to Mr. Armstrong the stocks which you held which were in his name and that you were jointly to make some minor adjustments of your other affairs.

I so advised Mr. Elmer L. Conway, who had acted as Mr. Armstrong's attorney in Cincinnati, by my letter of September 28, 1948.

Mr. Armstrong has been in the office this morning and advised me that these stocks ~~have not been~~ returned and that he is still having difficulties concerning this property adjustment.

It was my understanding that you were to return the stocks and the contents of the safety deposit vault and Mr. Armstrong advises me that you have not done so to date.

As you know I am acting for Mr. Armstrong and I would suggest that you select some Miami attorney of your own choice so that this matter can be adjusted without the necessity of litigation. I had hoped that this matter was concluded two years ago but I see that it is not and apparently something will have to be done.

Very truly yours,

Ward & Ward

By

WGW:j

PLAINTIFF'S EXHIBIT C.

General Motors Corporation
Broadway at 57th Street
New York 19, N. Y.
December 1, 1950

Mr. Ray Armstrong
c/o The Cincinnati Bank & Trust Co.
Eighth & State Street
Cincinnati 4, Ohio

Dear Sir:

We have received a communication from Walter K. Sibbald, attorney, Federal Reserve Bank Building, Cincinnati, Ohio, stating that he represents Mary R. Armstrong and that she claims an interest in the 1125 shares of $10

par-value Common stock of General Motors Corporation, registered in your name, the certificates for which are in her possession.

In view of this claim which we assume will be adjusted in due course, it will be necessary that we withhold payment of dividends.

Yours very truly,

L. C. Krauss
Transfer Agent

LCK:PDM

PLAINTIFF'S EXHIBIT D.

December 12, 1950

Mr. Walter K. Sibbald
Attorney at law
Federal Reserve Bank Building
Cincinnati, Ohio

Dear Sir:

We have a notification from General Motors Corporation that you, on behalf of Mrs. Mary R. Armstrong, are claiming an interest in certain shares of General Motors stock owned by Mr. Ray Armstrong.

On behalf of Mr. Ray Armstrong we would like to learn the basis for this claim.

Very truly yours,

Ward & Ward
By

WGW:j

PLAINTIFF'S EXHIBIT E.

Walter K. Sibbald
Attorney and Counsellor at Law
Federal Reserve Bank Building
Cincinnati

December 19, 1950

Ward & Ward,
Attorneys at Law,
Alfred I. DuPont Bldg.,
Miami 32, Florida

Gentlemen:

I have Mr. W. G. Ward's letter of December 12, relating to the General Motors stock owned by the Armstrongs. I understand Mr. Armstrong has been conferring with you for several months, and I assume he has given you the history of his controversy with his wife, particularly as it relates to the accumulation of shares in General Motors and other corporations.

In 1948 that controversy resulted in lengthy negotiations and some litigation between the parties. They were not far from a settlement, when Mr. Armstrong, by promising to behave himself, induced his wife to resume their marital relations. Thereafter he failed to make good his promise and Mrs. Armstrong, some months ago, established a residence in this county. Litigation between these parties would be expensive and, if possible, should be avoided. If you and your client so desire, I shall be glad to resume the 1948 negotiations.

Very truly yours,

WKS af

S/ Walter K. Sibbald

PLAINTIFF'S EXHIBIT E.

February 9, 1951.

Mr. Walter K. Sibbald
Attorney at law
Federal Reserve Bank Building
Cincinnati, Ohio

Dear Mr. Sibbald:

We have your letter of December 19th but unfortunately I was ill when the letter was received. I have been out of the office for over six weeks and have just come back to work this week. Mr. Armstrong has been in today and this has been my first opportunity to discuss this matter with him.

I have again discussed the question of the stock ownership with Mr. Armstrong and I am still at a loss to understand how Mrs. Armstrong can even contend that she has the right to take possession of the stocks and bonds in Florida in the name of her husband and without his consent transfer them to other states. As I have pointed out before this seems to me to be violative of the Florida law since a wife does not have that right under the laws of the State of Florida. We realize, however, we are dealing in abstract propositions.

Mr. Armstrong has intended to institute a suit in Ohio in the United States District Court. Perhaps in the Federal Court he will meet with some better success in obtaining service and having the case properly prosecuted. In addition to that we are prepared to institute a suit here in Dade County for a divorce.

We question, on behalf of Mr. Armstrong, the right of his wife to leave their legal domicile and their matrimonial

domicile; which is Florida, and attempt to establish a residence in Hamilton County, Ohio. As we understand the law a wife's domicile is that of her husband unless she can show that she has a legal right of separation in the state in which they were domiciled. Mr. Armstrong strenuously contends that she had no such right and that there was never any legal separation in this state and that she simply left Mr. Armstrong here in Miami without any cause or provocation on his part. Under those circumstances and with Mr. Armstrong's position sustained the wife could not establish a separate domicile.

These, of course, are moot questions until we actually get into litigation. We realize that litigation between the parties would be expensive but frankly I see no way to avoid it. If you have any proposition to submit relative to the return of the property which is registered in the name of Mr. Armstrong and are also ready to submit some proposal with reference to the settlement of divorce controversies and distribution of their jointly held property I will be glad to submit it to Mr. Armstrong for his consideration.

I believe this matter has been carried along over a long period of time and while the last delay has been caused solely by my inability to take care of business I believe the previous delay was caused by unprofitable negotiations between the parties. I do not believe it will serve either party any useful purpose by having prolonged negotiations. Mrs. Armstrong probably has in mind what she wants and we can give you a very prompt answer when we receive your advice.

This case seems to have reached a climax and we must get your advice one way or the other.

Very truly yours,

Ward & Ward

By

WGW:j

PLAINTIFF'S EXHIBIT G.

Walter K. Sibbald
Attorney and Counsellor at law
Federal Reserve Bank Building

February 20, 1951

Ward & Ward
Attorneys at Law,
Alfred I. duPont Building,
Miami 32, Florida

Gentlemen:

I have Mr. W. G. Ward's letter of February 9, relating to the Armstrongs, and note his loss to understand how Mrs. Armstrong has the right to the possession of the stock certificates. It appears to me that is now of no great importance, since Mrs. Armstrong has her husband's consent that she retain them in her possession.

I note also his question to the right of the wife to establish a separate residence. This resulted from ill treatment on the part of the husband and to his failure to keep his promise which he made in Asheville, North Carolina, on September 27, 1948, to mend his ways. As I understand the law, generally, and I assume it is the law of Florida, a wife may establish a separate residence where the sepa-

ration is caused by ill treatment. I think Mr. Armstrong's behavior here in Hamilton County last year fully justified his wife in establishing her residence in this County. She consulted me after she had determined she could no longer live with him, and I told her it was probable that the litigation between the parties would be renewed. If Mr. Armstrong decides to renew that litigation, she will have to meet it as best she can.

Shortly before the parties decided in 1948 they would make a further effort to live together, they were not far apart in their efforts to reach a property settlement, and I see no reason why we cannot resume the talk of settlement.

As you know, most of their real estate holdings are jointly owned and the only think to talk about is a division of chattels and intangibles. I have discussed the matter with Mrs. Armstrong, since receiving your letter of the 9th, and am authorized to propose an equal division of the stocks and bonds, an equal division of cash on hand and an equal division of collections made and to be made on the mortgages on the subdivision lots. So far as the Florida residence is concerned, if a settlement of other matters can be reached, Mrs. Armstrong will be willing to agree upon a buy or sell figure for the residence and its contents as they were when she left Miami, subject only to her right to retain as her own the silver, silverware, certain pictures, pieces of bisque, certain oriental rugs and antiques, all of which I am not able at this writing to detail. This proposal is in line with what was attempted in 1948, except at that time Mr. Armstrong wanted a division of his wife's jewelry. When they resumed living together at that time he promised his wife not to ever make any claim to any part of her jewelry.

I have always felt these parties should settle their differences without litigation, and now feel they should come to an agreement without prolonged negotiations. If you think it worthwhile to attempt a settlement along the lines herein indicated, I shall be glad to hear from you.

Very truly yours,

S Walter K. Sibbald

WKS al

PLAINTIFF'S EXHIBIT H.

April 16, 1951

Mr. Walter K. Sibbald
Attorney at law
Federal Reserve Bank Building
Cincinnati, Ohio

Dear Sir:

We have had several conferences with Mr. Armstrong after the receipt of your last letter of April 3. The terms demanded by Mrs. Armstrong are not acceptable to Mr. Armstrong and we have instituted a suit for divorce in the Circuit Court of Dade County, Florida, which was filed today, Monday, April 16th, 1951. A complete copy of the Bill of Complaint is being mailed to Mrs. Armstrong by the Clerk of the Circuit Court of Dade County. This summons is returnable on May 20th. If after Mrs. Armstrong brings you her copy you wish to go into the matter further please notify me.

I am sorry we could not make some amicable adjustment between the parties but they are entirely too far apart.

Very truly yours,

Ward & Ward

By

WGW:j

PLAINTIFF'S EXHIBIT 1

Walter K. Sibbald
Attorney and Counsellor at law
Federal Reserve Bank Building
Cincinnati

Air Mail
April 27, 1951

Ward & Ward,
Attorneys at Law,
Alfred I. duPont Bldg.,
Miami 32, Florida.

Gentlemen:

Since receiving your letter of April 16, relating to the Armstrong matter, I have expected that Mrs. Armstrong would receive the copy of the Bill of Complaint which you suggested would be mailed to her by the Clerk of the Circuit Court of Dade County.

That copy has not been received, and if you have an extra copy in your file, I shall appreciate it if you will send it to me.

Very truly yours,

S - Walter K. Sibbald

WKS al

PLAINTIFF'S EXHIBIT J.

Walter K. Sibbald
Attorney and Counsellor at Law
Federal Reserve Bank Building

Air Mail
May 22, 1951

Ward & Ward
Attorneys at Law,
Alfred I. duPont Bldg.,
Miami 32, Florida.
Gentlemen:

Re Armstrong

Some days ago I filed in the Common Pleas Court of this county an action to partition the Ohio real estate and caused a summons to be issued which has been returned "not found." That proceeding is now ready for constructive service through publication, and it occurs to me your client might want to enter his appearance and thus avoid the usual expense of publication. Therefore you will find enclosed an entry of appearance to be signed and verified by him, and returned to me if he wishes to avoid his share of that expense.

I do not intend to enter Mrs. Armstrong's appearance in the complaint for divorce. I presume that complaint will result in a decree, and that you will prosecute that matter to an early conclusion. That being so, the allegations of the complaint are such that I shall be compelled in proceedings to be filed here to claim the decree was procured upon false allegations. Thus it now appears these parties are in and headed into costly litigation that could have been

avoided if Mr. Armstrong had given serious thought to the testimony available here and elsewhere relating to the manner in which these parties accumulated their holdings and had been more reasonable in his ideas of how the matter should be settled.

I shall be glad if you will let me know about when the matter will be ready for final hearing in your court.

Very truly yours,

S Walter K. Sibbald

WKS:al
Encl

IN THE COURT OF APPEALS OF HAMILTON COUNTY, OHIO.

MARY R. ARMSTRONG,

Appellee,

vs.

RAYMOND C. ARMSTRONG,

Appellant,

and

GENERAL MOTORS CORPORATION, A DELAWARE CORP.; STANDARD BRANDS, INC., A DELAWARE CORP.; HUDSON MOTOR CAR COMPANY, A MICHIGAN CORP.; MURRAY CORP. OF AMERICA, A DELAWARE CORP.; NORTH AMERICAN AVIATION INC., A DELAWARE CORP. AND TRANS CONTINENTAL & WESTERN AIR, INC., A DELAWARE CORP.,

Defendants.

1953, November 6. Transcript of docket and journal entries and original papers filed.

1953, November 6. Motion for alimony pendente lite and expenses filed.

1953, November 19. Affidavit in support of motion for temporary alimony filed.

1953, November 19. Three briefs in opposition to motion for alimony pendente lite filed.

1953, December 14. Bill of exceptions filed.

1953, December 18. Three briefs on behalf of appellant filed.

1953, December 18. Receipt for copy of appellant's brief filed.

1954, January 5. Min. 3. Entry overruling motion for alimony pendente lite and expenses.

This cause came on to be heard upon the motion of the plaintiff-appellee, Mary R. Armstrong, for alimony pendente lite and expenses and was argued by counsel.

Upon consideration thereof the court finds it does not have jurisdiction to grant the relief sought and said motion is therefore overruled, to all of which plaintiff-appellee, Mary R. Armstrong, excepts.

1954, January 25. Notice of appeal to Supreme Court on questions of law filed.

1954, January 27. Three briefs on behalf of appellee filed.

[Duly certified.]

1954 January 27. Receipt for copy of appellee's brief filed.

1954, March 16. Min. 27. Judgment of affirmance of the Court of Common Pleas. Mandate sent to the Court of Common Pleas.

This cause came on to be heard upon appellant's notice of appeal, appellee's notice of cross appeal, the transcript of docket and journal entries, the original papers and pleadings, the bill of exceptions, the assignments of error by appellant and appellee and the briefs and arguments of counsel, from case No. A-131101 Court of Common Pleas, Hamilton county, Ohio; on consideration whereof the court finds that the judgment entered does not contravene the provisions of Article IV of the Constitution of the United States and that there is no error prejudicial to the defendant-appellant, or to the plaintiff-appellee in the record, proceedings and judgment in the court below.

It is therefore ordered that the judgment of the Court of Common Pleas of Hamilton county, Ohio, in said cause be and it is hereby affirmed at the cost of the defendant-appellant herein taxed at $8.

It is further ordered that a special mandate issue out of this court directed to the Court of Common Pleas, Hamilton county, Ohio to carry the judgment of this court into effect.

The plaintiff appellee and the defendant appellant are each allowed their exception.

1954, March 25. Motion for an order directing the Court of Appeals to certify its record, overruled.

1954, March 25. Motion of appellee to dismiss appeal, dismissed.

1954, April 3. Notice of appeal to the Supreme Court of Ohio filed.

1954, April 3. Praecipe for transcript of docket and journal entries filed.

[Duly certified.]

1954, April 5. Notice of cross appeal filed.

In Court of Appeals, First Appellate District, Hamilton County, Ohio

No. 7826

No. 33956

Notice of Appeal

The above named Raymond C. Armstrong, defendant appellant, hereby gives notice of appeal to the Supreme Court of Ohio from a final order and judgment entered by the Court of Appeals, First Appellate District of Ohio, Hamilton County, in this cause on the 16th day of March, 1954.

Said final order of the Court of Appeals affirmed a judgment of the Court of Common Pleas of Hamilton County, which judgment awarded alimony and expenses to Mary R. Armstrong, who is the plaintiff-appellee herein. The General Motors Corporation, Standard Brands Inc., the Hudson Motor Car Company, the Murray Corporation of America, North American Aviation, Inc., and Transcontinental and Western Air Inc., are all defendants-appellees.

This appeal is on questions of law, and is taken to the Supreme Court:

a) In a case involving a debatable constitutional question; and

b) On condition that a motion to certify be allowed by the Supreme Court.

(S.) Gorman, Silversteen & Davis, Attorneys for Defendant-Appellant.

Praecipe (omitted in printing).

Acknowledgments of service (omitted in printing).

Filed in the Court of Appeals, Hamilton County, April 3, 1954.

Filed in the Supreme Court of Ohio, April 5, 1954.

In Court of Appeals, First Appellate District, Hamilton County, Ohio

Notice of Cross Appeal

The above named, Mary R. Armstrong, plaintiff-appellee, hereby gives notice of cross-appeal to the Supreme Court of Ohio from the order overruling her motion for alimony pendente lite and expenses entered January 5, 1954 and from the final order and judgment entered on the 16th day of March, 1954, which orders were entered in this cause by the Court of Appeals, First Appellate District of Ohio, Hamilton County.

This appeal is on questions of law, and is taken to the Supreme Court on condition that the Supreme Court assumes jurisdiction pursuant to a notice of appeal heretofore filed herein by the defendant-appellant.

(S.) Walter K. Sibbald, Attorney for Plaintiff Appellee.

Acknowledgment of service (omitted in printing).

Filed in the Supreme Court of Ohio April 5, 1954.

In the Supreme Court of Ohio.

Assignment of Error

Raymond C. Armstrong, appellant, for his assignments of error herein, says that the judgment entered by the Court of Appeals in the above entitled cause on March 16, 1954, is erroneous and against the just rights of the appellant in each of the following respects:

1. The Court of Appeals erred in not reversing the Court of Common Pleas of Hamilton County for the reason that it had no jurisdiction to award alimony to plaintiff-appellee.

2. The Court of Appeals erred in not reversing the Court of Common Pleas of Hamilton County for not giving full faith and credit to the entire judgment entered in the Circuit Court of the Eleventh Judicial District in and for Dade County, Florida, entered October 2, 1951, contrary to Article IV of the Constitution of the United States.

3. The Court of Appeals erred in not reversing the Court of Common Pleas of Hamilton County for not dismissing

petition of plaintiff appellee and entering final judgment for defendant appellant.

4. There are other errors apparent upon the face of the record.

Wherefore, the appellant prays that the judgment of said Court of Appeals of Hamilton County, and the judgment of said Court of Common Pleas of Hamilton County, may both be reversed, and judgment directed to be entered in said cause for Raymond C. Armstrong, the appellant.

Gorman, Silverstein & Davis, Attorneys for Appellant.

Filed in the Supreme Court of Ohio April 9, 1954.
Filed in the Supreme Court of Ohio June 26, 1954.

IN THE SUPREME COURT OF OHIO

MOTION TO CERTIFY RECORD

Now comes Raymond C. Armstrong, appellant herein, and represents that on the 16th day of March, 1954, in an action pending in the Court of Appeals of Hamilton County, wherein this appellant was the defendant appellant, and the said appellee was the plaintiff appellee, said court rendered a judgment in favor of said appellee, and against this appellant, affirming a judgment rendered in favor of said appellee in the Court of Common Pleas of said county; twelve copies of printed brief containing statement of the questions presented and a statement of the case, as required by the rules of this court, being filed herewith, and to which reference is here made.

Appellant further represents that he has heretofore filed Notice of Appeal in the Court of Appeals and a similar Notice in this Court as required by law; and further that said case is one of both public and great general interest and that prejudicial error has intervened in the proceedings had in said Court of Appeals, all within meaning of Article IV, Section 2, of the Constitution of the State of Ohio and by reason thereof this Honorable Court has jurisdiction to and ought to review said judgment. And

said appellant also files herewith his assignments of error as required by law and the rules of this Court.

Wherefore said appellant makes application for an order directing said Court of Appeals to certify its record to the Supreme Court.

German, Silversteen & Davis, Attorneys for Appellant.

Filed in the Supreme Court of Ohio April 9, 1954.
Filed in the Supreme Court of Ohio June 26, 1954.

IN THE SUPREME COURT OF OHIO

MOTION TO DISMISS APPEAL AS OF RIGHT—Filed April 27, 1954

Comes now Mary R. Armstrong, one of the appellees, and moves to dismiss the appeal filed herein as of right.

(S.) Walter K. Sibbald, Attorney for said Appellee.

Proof of service (omitted in printing).

[File endorsement omitted.]

IN THE SUPREME COURT OF OHIO

STIPULATION—Filed November 10, 1954

The plaintiff appellee and the defendant appellant hereby stipulate and agree to the following:

That in the preparation of, and in the printing of the Record in this cause the deposition of W. R. Culbreath was unintentionally omitted; and,

That in said deposition the said witness testified that he was a member of the Florida Bar and practicing as an attorney in Dade County; that he was familiar with the trial of uncontested divorce actions in said county; and that the fee customarily allowed by the Court to Master Commissioners in uncontested divorce actions amounts to Twenty-five Dollars.

The said parties further stipulate and agree that the foregoing may be considered by the Court as a part of the Record in this cause.

(S.) Walter K. Sibbald, Attorney for Plaintiff Appellee. (S.) Gorman, Silverstein & Davis, Attorneys for Defendant-Appellant.

[File endorsement omitted.]

IN THE SUPREME COURT OF OHIO

PETITION FOR REHEARING—Filed December 28, 1954

The court stated the issue properly, but misinterpreted the holding in *Thompson v. Thompson*, 226 U. S. 551 and *Estin v. Estin*, 334 U. S. 541. In this case it is not a question what the Florida court could do, but what it did do. The court, after a hearing at which Mrs. Armstrong had full opportunity to be heard, *denied* her any alimony. This court now states that part of the order denying alimony is not entitled to full faith and credit in Ohio.

In *Thompson v. Thompson*, 226 U. S. 551, it was held that a wife at fault could not obtain alimony outside the matrimonial domicile, where she had been denied alimony in the matrimonial domicile on service by publication. In this case, the Florida order denying alimony is not granted full faith and credit, simply because service was by publication, although the wife here was not only served by publication, but had full knowledge of the action, and deliberately abstained from defending.

But Justice Douglas plainly pointed out in *Estin v. Estin*, 334 U. S. 541, at page 546, footnote 4, a wife by her conduct could forfeit her rights to alimony under the laws of the state of the matrimonial domicile, even though served by publication. The Florida court decreed that Mrs. Armstrong had forfeited these rights. Not only statutes but *Court orders* must be given full faith and credit. This the court of Ohio failed to do. As a result Ohio may become a haven for wives seeking to relitigate matters once decided, but also for husbands who flee from their matri-

monial domicile to defeat just claims for alimony. This we pointed out clearly on pages 3 and 4 of the Reply and Supplemental Brief.

For these reasons as well as the denial of full faith and credit we pray for a rehearing.

Respectfully submitted, Robert N. Gorman, Gorman, Silversteen & Davis, 808 Traction Building, Cincinnati 2, Ohio. Attorneys for Appellant.

[File endorsement omitted.]

IN THE SUPREME COURT OF OHIO

ASSIGNMENTS OF ERRORS ALLEGED BY PLAINTIFF-APPELLEE ON CROSS-NOTICE OF APPEAL—Filed August 23, 1954

First, That the Court of Common Pleas erred in refusing to grant the plaintiff-appellee a divorce, and

Second, That the Court of Appeals erred in overruling the appellee's motion for alimony pendente lite and expenses, upon the ground that it had no jurisdiction to entertain that motion.

[File endorsement omitted.]

IN THE SUPREME COURT OF OHIO

[Title omitted]

MEMORANDA OF PLEADINGS, &C., FILED, WRITS ISSUED, &C., JUDGMENTS, ORDERS & DECREES

Date

April 5, 1954. Notice of Appeal and proof of service filed.

April 5, 1954. Cross-Notice of Appeal and proof of service filed.

April 5, 1954. Transcript of Docket Entries, original papers and bill of exceptions filed.

Date

April 9, 1954. Motion to certify, appellant's printed brief and proof of service filed.

April 27, 1954. Motion by appellee to dismiss appeal as of right, appellees' brief on motion and proof of service filed.

May 13, 1954. Appellant's printed reply brief and proof of service filed.

June 2, 1954. Motion by Appellee to Dismiss Appeal as of Right, overruled. J. 41, page 220.

June 2, 1954. Motion for an Order directing the Court of Appeals of Hamilton County to certify its record, allowed. J. 41, page 220.

June 2, 1954. Order = 2931 issued to Clerk of Courts to certify record.

June 4, 1954. Papers taken by Rodenfels. 6/30/54. Returned.

June 9, 1954. Certificate from Court of Appeals filed.

June 9, 1954. Cause stands for hearing on appeal as of right.

June 26, 1954. Assignments of Error and appellant's printed brief refiled. 7/2/54 proof of service filed.

June 29, 1954. Printed Record and acknowledgment of service filed. 7/1/54 proof of service filed.

August 23, 1954. Leave to file Appellees' printed brief instanter filed.

August 23, 1954. Appellee's printed brief and proof of service filed.

September 15, 1954. Printed reply and supplemental brief and proof of service filed.

November 10, 1954. Stipulation of counsel filed.

November 10, 1954. Additional Authorities of Appellee filed.

December 15, 1954. Judgment Affirmed. J. 41, page 361.

December 21, 1954. Notified Application for relearing to be filed.

December 28, 1954. Application for rehearing filed and proof of service filed.

January 5, 1955. Rehearing denied. J. 41, page 378.

December 20, 1954. Original Papers, Bill of Exceptions sent to Clerk.

Journal No. 41, page 220. Wednesday, June 2, 1954. Motion by Appellee to Dismiss Appeal as of Right. Hamilton County.

It is ordered by the Court that this motion be and the same hereby is, overruled.

Journal 41, page, 220. Wednesday, June 2, 1954. Motion for an Order Directing the Court of Appeals of Hamilton County to Certify Its Record.

It is ordered by the Court that this motion be, and the same hereby is, allowed.

IN SUPREME COURT OF OHIO

JUDGMENT—December 15, 1954

This cause came on to be heard upon the transcript of the Record of the Court of Appeals of Hamilton County, and was argued by counsel. On consideration whereof, it is ordered and adjudged by this court, that the judgment of the said Court of Appeals be, and the same is hereby, affirmed; and it appearing to the Court that there were reasonable grounds for this appeal it is ordered that no penalty be assessed herein.

It is further ordered that the appellees recover from the appellant their costs herein expended taxed at $——.

Ordered, that a special mandate be sent to the Court of Common Pleas of Hamilton County to carry this Judgment into Execution.

Ordered, that a copy of this entry be certified to the Clerks of the Court of Appeals of Hamilton County, "for entry".

IN SUPREME COURT OF OHIO

ORDER DENYING REHEARING—January 5, 1955

Upon consideration of the above application for rehearing, it is ordered by the Court that rehearing be, and the same hereby is, denied.

Clerk's Certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1954

No. 645

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed April 25, 1955

The petition herein for a writ of certiorari to the Supreme Court of the State of Ohio is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Florida decree awarding Armstrong, the petitioner, a divorce, and denying Mrs. Armstrong, the respondent, alimony, as required by the provisions of Article IV of the Constitution of the United States.

While it is true service in Florida on the respondent, Mrs. Armstrong, was only by publication, nevertheless a copy was mailed to her and she had full knowledge of the proceedings, but she deliberately refused to appear. Furthermore, the decree was granted by a court of the matrimonial domicile. By her failure to appear Florida had a right to fully adjudicate all matters, as was done in Virginia in *Thompson* v. *Thompson*, and the Ohio courts had no right to relitigate the question of alimony four months later. The question had been fully and completely adjudicated by the Florida Court.

REASONS FOR GRANTING THE WRIT

These exact facts have not been before this court since *Thompson* v. *Thompson*, 226 U. S. 551. This court has never applied the doctrine of divisible divorce to this set of circumstances. In all other cases decided by this court either there were previous decrees of alimony, or the husband had obtained a divorce by establishing a residence in a state other than the matrimonial domicile.

However, in this case the facts are entirely different. Florida was the matrimonial domicile and it was the only state at the time of the divorce action that could fully adjudicate all rights of divorce and alimony. The husband, Armstrong, the petitioner, stayed in Florida, the matrimonial domicile, and the wife fled to Ohio. On April 16, 1951, when Armstrong filed suit in Florida, since it was the matrimonial domicile of both parties, Florida was the only state at that time that could completely adjudicate the marital difficulties of the parties. Furthermore, we contend, since Mrs. Armstrong had full knowledge of the proceed-

ings and deliberately refused to appear, that this fact differentiates all other cases where the doctrine of divisible divorce was applied. Cf *Scherrer* v. *Scherrer*, 334 U. S. 343.

While the Supreme Court of Ohio attempts to distinguish the case of *Thompson* v. *Thompson*, 226 U. S. 551, on the ground that the decree in Virginia foreclosed an alimony action in the District of Columbia, the actual ruling of this court was that the court decree of the matrimonial domicile, not just the statutes, had to be given full faith and credit. Furthermore, this principle of the recognition of the decree rendered in the matrimonial domicile has never been set aside. In fact on June 7, 1948, this court in *Estin* v. *Estin*, 334 U. S. 541, 546, footnote 4, said:

> "The case is unlike *Thompson* v. *Thompson*, 226 U. S. 551, 57 L. Ed. 347, 93 S. Ct. 129, where the wife by her conduct forfeited her right to alimony under the laws of the State of the matrimonial domicile where her husband obtained the divorce, and hence could not retain a judgment for maintenance subsequently obtained in another jurisdiction."

So we say that the facts here are similar to those in the *Thompson* case. By fleeing from Florida, the state of the matrimonial domicile, Mrs. Armstrong lost her right to go elsewhere and seek alimony. It is that part of the decree denying her alimony to which the Ohio courts failed to give full faith and credit.

The Ohio court, apparently sensitive about being reversed, finally seemed to bottom its decision on *May* v. *Anderson*, 345 U. S. 528, which was a case involving custody of a child, and in such case it was pointed out by Justice Frankfurter generally that responsibilities to children "give rise to interests different" from "property, personal claims and even marriage status." Concurring opinion *May* v. *Anderson*, 345 U. S. 528, 535, 536.

The Ohio Supreme Court denied full faith and credit to part of the Florida decree on the ground that the denial of alimony to the wife is a decree "in personam and requires either an appearance by, or lawful service on the wife, in order to have extraterritorial effect." It arrives at this conclusion by stating that a divorce decree is not one *in personam*, but one denying alimony or awarding ailmony is *in personam*.

Distinctions between decrees *in personam* and *in rem* and attempts to classify actions in such categories have long since lost their validity. See *Mullane* v. *Hanover Bank & Trust Co.*, 339 U. S. 306, 312. Such distinctions do no more than beg the issue. To uphold such a distinction it is necessary to say that an action to sever marital ties is half *in rem* and half *in personam*. Such distinctions defeat not only the right of Florida, the state of matrimonial domicile, to adjudicate marital difficulties completely, but prevent every other state from so doing. As pointed out by the late Justice Jackson, personal jurisdiction should only be necessary where there is a contrived domicile (see *May* v. *Anderson*, 345 U. S. 528, 539, 540), but it should not be applicable to defeat the jurisdiction of the matrimonial domicile to fully adjudicate all matters pertaining to the status of marriage. There must be limits to the doctrine of divisible divorce unless fleeing spouses are to be rewarded by their flight from their home state where the facts are known the best and are most readily available. The full faith and credit clause should not be overruled by a fictitious classification into actions *in rem* and actions *in personam*. See concurring opinion of Justice Frankfurter in *Williams* v. *North Carolina*, 317 U. S. 287, 306, 307.

We submit that the same rule should apply in divorce decrees as to full faith and credit and recognition as it does in other civil actions. If service by publication is sufficient for the settlement of accounts of a trust fund where the

beneficiaries live outside the state, it should be sufficient in the matrimonial domicile where the fleeing spouse had actual notice and full opportunity to appear, and deliberately refused to do so. As said by Justice Jackson in *Mullane* v. *Hanover Bank and Trust Co.*, supra 314:—

> "Personal service has not in all circumstances been regarded as undispensable to the process due residents, and it has more often been held unnecessary as to nonresidents."

Mrs. Armstrong's rights on October 1951 were to be determined by Florida law and not by Ohio law, since they did not have their matrimonial domicile in Ohio.

The apparent discarding of the doctrine of matrimonial domicile was designed to permit recognition of migratory divorces. It thus took away from the state of the matrimonial domicile exclusive jurisdiction in divorce. It was never intended, however, to limit the state of the matrimonial domicile in its right to entirely settle marital difficulties of its own citiezns, and thus overrule *Thompson* v. *Thompson*. That is why Mr. Justice Douglas was particular in distinguishing the facts in the *Thompson* case in his opinion in *Estin* v. *Estin*. We maintain that Florida, as the matrimonial domicile, had jurisdiction to settle all marital difficulties, and its decrees should be recognized by all other states.

The closest case to this is *Kreiger* v. *Kreiger*, 334 U. S. 555, but this case presents three important issues which were not passed on in *Kreiger*, and which this court has not passed upon since *Thompson* v. *Thompson*. *First*, the Florida decree *denied* the wife alimony, while the decree in *Kreiger* was silent. *Secondly*, the decree in this case was granted in Florida, the matrimonial domicile of both parties, and not in a state where the parties had to establish a domicile. *Third*, Mrs. Armstrong, although served only

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SUPREME COURT, U.S.

HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1954

No. [redacted]

RAYMOND C. ARMSTRONG,

Petitioner,

v.

MARY R. ARMSTRONG,
GENERAL MOTORS CORPORATION, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

ROBERT N. GORMAN,
STANLEY A. SILVERSTEIN,
JAMES W. HENGELBROK,
808 Traction Building,
Cincinnati 2, Ohio,

JULIUS R. SAMUELS,
918 First Nat'l. Bank Bldg.,
Cincinnati 2, Ohio,

Attorneys for Petitioner.

THE JOHNSON & HARDIN CO., LAW PRINTERS
CINCINNATI, OHIO

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

To the Honorable the Chief Justice and the Associates Justices of the Supreme Court of the United States:

Petitioner, Raymond C. Armstrong, prays that a writ of certiorari issue to review the order and judgment entered by the Supreme Court of Ohio on December 15, 1954, and the order denying the application for re-hearing, entered January 5, 1955.

OPINIONS BELOW

The opinion of the Supreme Court of Ohio is reported in 162 Ohio St. 406 (advance sheets, Ohio Bar, issue of Decem-

ber 20, 1954). The opinion of the Court of Appeals is not yet reported, but is attached hereto as an appendix. The Court of Common Pleas of Hamilton County, Ohio, did not render an opinion other than the court order of July 18, 1953, hereto attached in the appendix.

JURISDICTION

The judgment of the Supreme Court of Ohio was entered on December 15, 1954, and an application for re-hearing, filed in accordance with Rule XX of the Rules of the Supreme Court of Ohio, was denied January 5, 1955. The jurisdiction of this Court is invoked under the provisions of 28 U. S. Code, Section 1257 (3). The courts of Ohio, contrary to the provisions of Section I, Article IV, of the Constitution of the United States, refused to give full faith and credit to the entire decree in Florida, which awarded the petitioner, Raymond C. Armstrong, a divorce, and denied alimony to his wife, Mary C. Armstrong, the respondent. The Ohio court recognized the decree for divorce, but refused to give full faith and credit to the portion denying the wife alimony. Petitioner states that the distinction made is contrary to the decision in *Thompson* v. *Thompson*, 226 U. S. 551, which was cited with approval as late as June 7, 1948, in *Estin* v. *Estin*, 334 U. S. 541, 546, footnote 4. It presents a clear constitutional question under 28 U. S. Code, Section 1257 (3).

QUESTION PRESENTED

The sole question is whether the courts of Ohio, under Article IV of the Constitution of the United States, are compelled to give full faith and credit to the *entire* decree, granting a divorce, and denying alimony, rendered by the court in Florida, the matrimonial domicile of the parties, following the decision of *Thompson* v. *Thompson*, 226 U. S. 551. While the Florida decree was rendered only after

service by publication, the undisputed evidence shows that the wife, at the time, had not acquired a domicile in Ohio, that she had full knowledge of the action in Florida, and had ample opportunity to appear, but deliberately refused to do so. The procedure fully complied with the test in *Mullane* v. *Hanover Bank and Trust Co.*, 339 U. S. 306.

The Ohio court applied the doctrine of divisible divorce, recognizing the validity of the Florida decree for divorce, but refused to recognize that portion of the decree denying alimony to the wife. If this decision is permitted to stand, one spouse fleeing from the matrimonial domicile can prevent every court in the country from fully settling their marital difficulties.

We recognize that this court has established the doctrine of divisible divorce where the husband obtains a divorce only by publication (*Estin* v. *Estin*, 334 U. S. 541, *Esenwein* v. *Pennsylvania*, 325 U. S. 279), but it has never extended the doctrine to apply so as to oust the courts of the matrimonial domicile from jurisdiction to adjudicate the marital difficulties. In all previous cases the husband left the matrimonial domicile and established a residence elsewhere and obtained a divorce. This court held that under such a situation a previous order for maintenance and support survived the divorce action. Some states have permitted alimony to be rendered subsequently, but as was pointed out by Chief Judge Stephens of the Court of Appeals of the District of Columbia, in his dissent in *Hopson* v. *Hopson* (decided January 20, 1955, No. 11558, Dockets of U. S. C. A. D. C.), F. (2d) , 23 U. S. Law Week 2354, there is substantial authority that an unadjudicated claim for maintenance, alimony or support does not survive a decree in a foreign state. See also *Peff* v. *Peff*, 2 N. J. 513, 67 Atl. (2d) 161; *DeYoung* v. *DeYoung*, 27 Cal. (2d) 521, 165 Pac. (2d) 547.

Some of the state courts, as Judge Stephens points out, follow *Thompson* v. *Thompson*, 226 U. S. 551, while others disregard it, and apply the doctrine of divisible divorce. This court should not leave the law of divorce in such an unsettled state, but state clearly that the doctrine of divisible divorce should not be applied in favor of those who flee from the matrimonial domicile, and with full knowledge of the facts, refuse to return and defend the action.

While this court has placed less emphasis on domicile in recent years, it has not considered the effect of extending the doctrine to deprive a state of the matrimonial domicile from fully adjudicating all marital problems.

The decision of the Ohio Supreme Court on service by publication cannot be reconciled with *Mullane* v. *Hanover Bank & Trust Co.*, 339 U. S. 306. It would seem that the true question is, "How divisible is a divisible divorce?" (23 Univ. of Cincinnati Law Rev. 349). Shall it be applied relentlessly no matter what the facts, or should the entire doctrine, starting with *Williams* v. *North Carolina*, 317 U. S. 287, be revisited, and limited to facts which will not reward a spouse, who flees to prevent adjudication of marital difficulties.

The decision of the Supreme Court of Ohio is directly opposed to *Thompson* v. *Thompson*, 226 U. S. 551, which was recognized as the law as late as June 7, 1948. See *Estin* v. *Estin*, 334 U. S. 541, 546, footnote 4.

STATUTES INVOLVED
UNITED STATES

The first section of Article IV of the Constitution of the United States is primarily involved:—

> "Section 1. Full Faith and Credit.—Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other State.

And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

FLORIDA

The sections of the Florida statutes provide:

"Ch. 65 Sec. 65.06. Bills for divorce may be brought against defendants residing out of the state, and service shall be effected upon them as in other cases in chancery.

"Ch. 48 Sec. 48.01. Service of process by publication may be had in any of the several courts of the state and upon any of the parties mentioned in 48.02 in any suit or proceedings:—

* * * * * * *

"4. For divorce or annulment of marriage;

* * * * * * *

"10. In any other suit or proceeding, not hereinabove expressly mentioned, wherein personal service of process or notice is not required by the statutes or constitution of this state or by the constitution of the United States."

OHIO

Section 3105.03

"Except in an action for alimony alone, the plaintiff shall have been a resident of the state at least one year immediately before filing the petition. Actions for divorce or for alimony shall be brought in the county of which the plaintiff is and has been a bona fide resident for at least ninety days immediately preceding the filing of the petition, or in the county where the cause of action arose. The court of common pleas shall hear and determine the case, whether the marriage took place, or the cause of divorce occurred, within or without the state."

STATEMENT OF CASE

Raymond C. Armstrong and his wife, Mary C. Armstrong, were married on June 18, 1917, at Cincinnati, Ohio. In 1922 or early 1923 they left Ohio and took up their residence in Florida. Aside from a short period of time spent in the Isles of Pines from 1925 to 1928, they have ever since been residents, voters and taxpayers of Miami, Florida. The undisputed evidence was that since 1928 their matrimonial domicile has been at Miami, Florida.

Friction developed between the Armstrongs, and in October, 1950, Mrs. Armstrong left Florida and came to Ohio. On April 16, 1951, Armstrong filed suit in the Circuit Court of Dade County, Florida for a divorce. Service was obtained by publication and a copy mailed to Mrs. Armstrong, and she employed an Ohio attorney and actually had notice of the proceedings. However, she did not return to Florida, and made no personal appearance in the suit. Instead, upon receiving notice by publication which was mailed to her, her attorney wrote to Armstrong's attorney on May 22, 1951:

> "I do not intend to enter Mrs. Armstrong's appearance in the complaint for divorce. I presume that complaint will result in a decree, and that you will prosecute that matter to an early conclusion. That being so, the allegations of the complaint are such that I shall be compelled in proceedings to be filed here to claim the decree was procured upon false allegations." (R. 303).

Under the Ohio law Mrs. Armstrong would not have been considered a resident of Ohio for the purpose of filing an action for divorce until November 10, 1951 (R. 46). Section 3105.03, Ohio Revised Code (eff. 10-1-53), formerly Section 8003-3, Ohio General Code (eff. 8-1-51), formerly Section 11980, Ohio General Code.

On October 2, 1951, upon presentation of the report of the Master Commissioner, the Circuit Court of the Eleventh Judicial District of Dade County, Florida, *granted Armstrong a divorce and denied Mrs. Armstrong alimony* (R. 246-9).

Subsequently, in fact four months later, on February 1, 1952, Mrs. Armstrong filed an action for divorce and alimony in the Court of Common Pleas of Hamilton County, Ohio, against Armstrong, claiming the Florida decree had been obtained by fraud. Armstrong entered his appearance, and in his answer set up that the Florida "court had full and complete jurisdiction over the subject matter" and the persons, and that the Florida decree precluded any action in Ohio (R. 7).

Upon hearing, the Court of Common Pleas of Hamilton County, Ohio, held it had to give full faith and credit to the divorce decree entered in Dade County, Florida, and then under the doctrine of divisible divorce "held that were it not for the Florida decree Mrs. Armstrong would be entitled to a divorce," and proceeded to allow her alimony, consisting of considerable cash, jewelry, and 1,250 shares of General Motors stock, or approximately half of the property owned by Armstrong (App. C, p. 9a-10a).

On appeal, both the Court of Appeals and the Supreme Court of Ohio affirmed the judgments *in toto*. Both courts held that the Ohio courts had to give full faith and credit to the Florida decree for divorce, but because service was only by publication in the Florida action, also held that the Ohio courts could still award alimony to Mrs. Armstrong. Both courts attempted to distinguish the ruling in *Thompson* v. *Thompson*, 226 U. S. 551.

SPECIFICATIONS OF ERROR

The sole ground of error is that the Supreme Court of Ohio erred in not giving full faith and credit to the entire

by publication, received notice, had full opportunity to appear, and deliberately declined to do so. These three factors distinguish the case from all others, and present matters upon which this court should pass.

In a very splended article by J. H. C. Morris of Oxford University, entitled "*Divisible Divorce*," in 64 Harv. Law Rev. 1287, he points out specifically at page 1293 that the facts in this case present the type of question that should be clarified. If *Thompson* v. *Thompson* is to be overturned, which we think it should not be, it should be by this court and not by a state court, as a federal constitutional question is involved. The article of Mr. Morris further shows that this court has never completely abandoned the significance of the matrimonial domicile.

If this case is not reviewed and reversed, let us examine the chaotic conditions that will result. A wife living in Cincinnati, Ohio, could go to Kentucky, West Virginia or Indiana, stay there so that service could be made only by publication, and a husband could never get his marital matters settled. Perhaps more tragic is what did actually happen in Kentucky. A husband living with his wife in Kentucky, the matrimonial domicile; taking with him all of his property, crossed the river and came to Cincinnati, Ohio. The wife is still trying vainly to obtain in Kentucky, the matrimonial domicile, an alimony award for her support. She has failed to date because she can not obtain personal service on her husband. If this decision remains, flight of one spouse from the matrimonial domicile is to be rewarded, as it leaves the courts of the matrimonial domicile powerless to adjust any financial affairs between husband and wife. We maintain that a simple rule of granting entire full faith and credit to the decrees of courts of the matrimonial domicile should be enforced, particularly when the fleeing spouse had notice and full opportunity to appear.

In conclusion, we submit that if a motorist by merely using the highways of the state consents to jurisdiction in tort actions (*Hess* v. *Pawloweski*, 274 U. S. 352), certainly married couples who live for twenty-two years in one jurisdiction have likewise consented to the jurisdiction of the courts of the state in which they live to adjudicate their rights. That jurisdiction should continue until one or the other has acquired a domicile elsewhere. Such acquisition of a new domicile was not claimed by Mrs. Armstrong either at the time the suit of Armstrong was filed, or when it was tried.

If this rule of Ohio prevails, a wife could flee from the matrimonial domicile say to California, and twenty years later, when passing through, the husband could face an alimony action which he thought had been fully adjudicated in the matrimonial domicile.

CONCLUSIONS

We submit that the principal of giving full faith and credit to the entire decree for divorce entered by the courts of the state of the matrimonial domicile, as announced in *Thompson* v. *Thompson*, 226 U. S. 551, is the only sound rule. If it were not still the law, there would have been no necessity to distinguish it in *Estin* v. *Estin*, 334 U. S. 541, 546, footnote 4.

Because the Supreme Court of Ohio did not give entire full faith and credit to the Florida decree, the petition for a writ of certiorari should be granted, and the Supreme Court of Ohio reversed.

Respectfully submitted,

ROBERT N. GORMAN,
STANLEY A. SILVERSTEEN,
JAMES W. HENGELBROK,
JULIUS R. SAMUELS,
Attorneys for Petitioner.

APPENDIX A

PERTINENT PORTIONS OF ANSWER FILED BY DEFENDANT (PETITIONER HERE) IN COURT OF COMMON PLEAS, HAMILTON COUNTY, OHIO:

ANSWER

(Filed January 2, 1953)

* * * * * *

Defendant admits that on or about the sixteenth day of April, 1951, in case No. 140311, in chancery, on the docket of the Circuit Court of the Eleventh Judicial District, in and for Dade County, Florida, he filed a complaint in which he prayed for a divorce from plaintiff and in which complaint he made the allegations set forth on the second page of plaintiff's amended petition and admits that he appeared before a special master in chancery to whom said cause had been referred by said court and gave his testimony, tending to prove said allegations; and that thereafter said special master filed with said court his report, incorporating therein a transcript of the defendant's said testimony, in which report said special master found that this defendant was entitled to a decree for divorce; and that thereupon said cause came on to be heard by said court, upon said complaint, the testimony taken before the special master and upon the master's report, upon consideration whereof, on or about October 2, 1951, entered a decree granting a divorce in favor of this defendant from plaintiff. Defendant denies that the allegations set forth in his complaint in his suit for divorce as aforesaid were false; denies that the testimony that he gave in said cause was false, but on the contrary, says that said allegations and testimony were true.

Defendant denies that plaintiff was not served with summons in said action pending in the Dade county Circuit Court, said defendant having been duly and legally served

with summons in said action, according to the law of the state of Florida, and that by reason thereof said court had full and complete jurisdiction over the subject matter of said action and over the persons of this defendant and plaintiff.

APPENDIX B

PERTINENT PORTION OF DEFENDANT'S EXHIBIT 3 IN COURT OF COMMON PLEAS, HAMILTON COUNTY, OHIO:

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA, IN CHANCERY

No. 140,311-H

RAYMOND C. ARMSTRONG, also known as Ray Armstrong,

Plaintiff,

v.

MARY R. ARMSTRONG,

Defendant.

FINAL DECREE

THIS CAUSE COMES ON TO BE HEARD upon the Bill of Complaint, the testimony taken before the Special Master, the Honorable John W. Prunty, and upon the Master's Report.

It appears that due and proper service by publication has been effected against the defendant, MARY R. ARMSTRONG, and that a decree pro confesso has been duly and properly entered for failure of said defendant to plea or answer in this cause.

Upon consideration of the above, it is, therefore, CONSIDERED, ORDERED, ADJUDGED AND DECREED:

1. That this Court has jurisdiction over the parties and the subject matter involved herein.

2. That the equities are with the plaintiff.

3. That a decree of divorce a vinculo matrimonii is hereby entered in favor of the plaintiff, RAYMOND C. ARMSTRONG, also known as Ray Armstrong, against the defendant, MARY C. ARMSTRONG.

4. That RAYMOND C. ARMSTRONG, also known as Ray Armstrong, is hereby decreed to be the owner of that certain property situate in Dade County, State of Florida, and more particularly described as follows:

> Lots TWELVE (12) and THIRTEEN (13), Block ELEVEN (11) of SPRING GARDEN, according to the Plat thereof, recorded in Plat Book 5, at page 38 of the Public Records of Dade County, Florida.
>
> TOGETHER WITH the building situate thereon and all furniture and fixtures contained therein.

And the said MARY R. ARMSTRONG, her heirs, successors, personal representatives, grantees or assigns, her agents, servants or attorneys or anyone on her behalf, be and the same are hereby enjoined and restrained from claiming or asserting any claim of title to said property from the date of this decree, and the said title be and the same is hereby quieted and forever set at rest in the said RAYMOND C. ARMSTRONG, also known as Ray Armstrong, as against any claim of the said MARY R. ARMSTRONG or anybody claiming by or through her.

It appears from the evidence and is found by the Master that the defendant's action shows a total disregard of any responsibility or duty as a wife in relationship to her husband, and sustains the conclusion that the said MARY R. ARMSTRONG has for many years attempted to gain possession and control of her husband's estate by any means or methods at her command regardless of good faith or regardless of the legality of such moves.

It appears that the husband has been deprived of stocks and bonds and moneys by the illegal action of the wife. The testimony shows and the Court so finds that the defendant has wrongfully taken from the possession of the plaintiff stocks and bonds approximately in the aggregate amount of between $90,000 and $100,000 which are in the name of the plaintiff; and in addition thereto, the wife has taken large sums of money from the joint bank account of the plaintiff and defendant.

In Florida a wife may be guilty of conversion or even embezzlement of her husband's property as held by the Supreme Court of Florida in *State* v. *Herndon*, 27 So. (2d) 833, 158 Fla. 115. The Court, therefore, finds that the stock certificates and bonds registered in the name of the plaintiff, the possession of which has been taken by the defendant against the consent of the plaintiff, are the property of the plaintiff, and the defendant is hereby directed and specifically ordered to return the said stock certificates and bonds to the plaintiff within fifteen (15) days from the date of the entry of this decree or be subject to an order for contempt and such other relief that may be deemed proper by this Court.

This Court takes recognition of the fact that litigation is now pending in the State of Ohio relative to the recovery of these stocks and bonds as well as the settlement of other matters concerning property rights between the parties. This Court recognizes that the Courts of Ohio will have the ultimate determination of the question of property rights where the property itself is in the State of Ohio, but in that regard this Court makes a specific finding that both the plaintiff and the defendant herein were citizens and residents of the State of Florida and had been for many years, the matrimonial domicile was the State of Florida, and that when the defendant left the matrimonial domicile in October of 1950, she did so without cause or without the

legal right to separate and set up her own domicile. Under those circumstances the Court finds that the wife defendant; MARY R. ARMSTRONG, did not have the right to separate and claim a separate legal domicile and in truth and in fact, her domicile was that of her husband.

This Court, therefore, finds the defendant has not come into this Court in good faith or made any claim to the equitable conscience of the Court and has made no showing of any need on her part for alimony. It is, therefore, specifically decreed that no award of alimony be made to the defendant and that the legal and equitable title to the real property above described was vested in the plaintiff as of the date of the purchase of the same by the plaintiff and the said legal title to said property be and the same is hereby vested in fee simple absolute in the plaintiff, RAYMOND C. ARMSTRONG, also known as Ray Armstrong, without further deed or conveyance from the defendant.

The defendant, MARY R. ARMSTRONG is further enjoined and restrained from interfering with the person or the property of the plaintiff.

The Court retains jurisdiction for the purpose of enforcing the terms and conditions of this decree.

DONE and ORDERED at Miami, Florida, this the 2nd day of October, A. D. 1951.

/s/ JOE H. MORRIS,
Circuit Judge.

APPENDIX C

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

No. A-131101

MARY R. ARMSTRONG,

Plaintiff,

v.

RAYMOND C. ARMSTRONG, GENERAL MOTORS CORPORATION, a Delaware Corporation, STANDARD BRANDS, INCORPORATED, a Delaware Corporation, HUDSON MOTOR CAR COMPANY, a Michigan Corporation, MURRAY CORPORATION OF AMERICA, a Delaware Corporation, NORTH AMERICAN AVIATION, INCORPORATED, a Delaware Corporation, TRANSCONTINENTAL & WESTERN AIR, INCORPORATED, a Delaware Corporation,

Defendants.

JUDGMENT ENTRY DENYING DIVORCE AND AWARDING ALIMONY AND EXPENSES TO PLAINTIFF

(Entered July 18, 1953)

This cause came on to be heard on the amended petition, the answer of Raymond C. Armstrong, the reply of the plaintiff and the testimony of the parties and their witnesses, and the Court being fully advised finds the plaintiff, Mary R. Armstrong, was a resident of the State of Ohio for more than one (1) year and of the County of

Hamilton for more than ninety (90) days next preceding the commencement of this action; and that plaintiff, and the defendant, Raymond C. Armstrong, were married at Cincinnati, Ohio, on the 18th day of June, 1917, and that no children have been born of said marriage.

The Court further finds that on October 2, 1951, the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, in case No. 140311-H, in Chancery, pending in said Court, entered a decree granting a divorce a vinculo matrimonii in favor of Raymond C. Armstrong and against Mary R. Armstrong, in which action the plaintiff here, Mary R. Armstrong, neither entered in appearance nor was personally served with summons.

The Court further finds from all of the evidence in this cause that plaintiff, Mary R. Armstrong, were it not for said Florida decree, would be entitled to a judgment granting to her a divorce in this action, and that this Court is required to, and does give full faith and credit to said Florida decree and is thereby required to, and does deny the prayer of the plaintiff, Mary R. Armstrong, for a divorce.

The Court further finds that the defendant, Raymond C. Armstrong, is the owner of property described as follows:

1. Lots 12 and 13, Block 11 of Spring Garden, according to the Plat thereof recorded in Plat Book 5, at page 38, of the Public Records of Dade County, Florida;

2. All the furniture, household goods and the fixtures contained in the residence situate on the lots described in the foregoing paragraph;

3. All lots in the name of Raymond C. Armstrong (not including lots jointly owned with plaintiff), in the Addition to Woodlawn Terrace Subdivision, recorded in Plat Book 33, pages 4 and 5, of the Hamilton County, Ohio, Records;

4. Ten (10) acres of land in the Ruscon Colony Farm in Tampa, Florida;

5. About Twenty (20) acres of land in the Isle of Pines;

6. The shares of capital stock described in plaintiff's amended petition including stock dividends heretofore declared thereon and unpaid dividends heretofore declared thereon.

and that the plaintiff, Mary R. Armstrong, is entitled to alimony as prayed for in her amended petition and, therefore, awards to her out of the foregoing property and out of property hereinafter described in her possession, heretofore claimed by said defendant as alimony, the following:

1. That she shall have and retain as her own property whatever balance remains in her possession of the moneys withdrawn by her in the month of July, 1948, from the joint bank accounts of the parties in the Cincinnati Bank and Trust Company, The First National Bank of Miami, Florida, and The Loveland National Bank of Loveland, Ohio, together with the cash withdrawn from the safe deposit box in the joint names of the parties in Miami, Florida, and the United States Savings bonds which she took into her possession, all of the foregoing being more fully described on page 4 of the answer of the defendant, Raymond C. Armstrong; and the said defendant is hereby deprived of any claim to or ownership in said withdrawals, cash and bonds;

2. That she shall have and retain as her own all jewelry now in her possession consisting of 1 Ladies diamond ring, 1 Ladies watch with 109 diamonds, 1 fancy ring platinum top gold shank, 1 diamond bracelet with 70 diamonds, 1 diamond brooch with 23 diamonds,

1 diamond brooch with 10 diamonds, 1 cocktail ring with diamond sapphire, 1 diamond ring with center diamond and 1 necklace, and the defendant, Raymond C. Armstrong, is hereby deprived of any other claim to or ownership in the jewelry referred to in page 4 of his answer;

3. That plaintiff shall have and the defendant, Raymond C. Armstrong, is hereby ordered to cause to be transferred to her one thousand two hundred and fifty (1,250) shares of the $5.00 par value capital stock of General Motors Corporation, together with any dividend or dividends which may be declared on said number of shares after the entering of this judgment and prior to the transfer of said shares to plaintiff. In the event the defendant, Raymond C. Armstrong, fails to cause said shares to be so transferred to plaintiff, such failure, when this judgment becomes final, may be reported to the Court and an application made for such order or orders as may be necessary to enforce a compliance with this order. When the said shares shall have been transferred the remaining shares of capital stock of the various defendant corporations as described in plaintiff's amended petition, shall be delivered to the defendant, Raymond C. Armstrong, free of any claim by the plaintiff thereto.

Upon the application of the plaintiff for an allowance to her for her attorney fee and expenses, it is ordered that the defendant, Raymond C. Armstrong, pay to the plaintiff the amount of Two Thousand Five Hundred Dollars ($2,500.00) for such expenses.

It is further ordered that the plaintiff and defendant, Raymond C. Armstrong, shall each pay one half (½) of the costs herein.

Each of the parties is hereby allowed an exception.

APPENDIX D

IN THE
COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO

Hamilton County, No. 7826

MARY R. ARMSTRONG,
Plaintiff-Appellee,

v.

RAYMOND C. ARMSTRONG,
Defendant-Appellant;

GENERAL MOTORS CORPORATION, et al.,
Defendant-Appellees.

APPEAL ON QUESTIONS OF LAW, FROM COURT OF COMMON PLEAS, HAMILTON COUNTY, OHIO

(Entered March 8, 1954)

MR. WALTER K. SIBBALD, for *Plaintiff-Appellee,*
MESSRS. GORMAN, SILVERSTEEN & DAVIS,
for *Defendant-Appellant.*

MATTHEWS, P. J.:

The defendant, Raymond C. Armstrong, in this appeal challenges the validity of a judgment for alimony rendered in favor of the plaintiff. The plaintiff, by her cross-appeal, challenges the validity of the Court's judgment denying a divorce to her.

The trial took place on the plaintiff's amended petition and the defendant's answer.

In the amended petition, the plaintiff alleged that the defendant had been guilty of gross neglect of duty and extreme cruelty which forced her to separate from him in October, 1950, and that in April, 1951, he filed an action in the Circuit Court of the Eleventh Judicial District in and for Dade County, Florida, in which he falsely charged that she was wholly without business training at and prior to their marriage, that during all of their marriage life of 34 years she had never shared in any business activities with him, that she had contributed nothing to the enhancement of his material assets, that she had an ungovernable temper and had shot at him with a revolver, that as early as 1943 she began to plan leaving him, that she had wrongfully induced him to place bank accounts and safety deposit boxes in their joint names for the purpose of thereafter taking them into her exclusive possession and did on their separation on a later date take certain amounts of money and bonds and stocks into her exclusive possession, and sought to convert them to her own use, that, upon a reconciliation in 1948, she had promised to return the money and other property to him, but had not done so, with the exception of about $7,000.00, which she returned to their joint bank account, that the reconciliation failed wholly because of her wrongdoing, and in October, 1950, she left their residence in Miami, Florida, and refused to disclose where she was living thereafter.

She also alleged that the defendant, Raymond C. Armstrong, made oath to the foregoing allegations, knowing them to be false and that the prosecution of said action based thereon would perpetrate a fraud upon said court, nevertheless he appeared before a special master in said cause and testified falsely as aforesaid, and the Special Master reported to the court that he was entitled to a divorce after an agreement had been reached between the defendant Armstrong and the Special Master, setting the amount of the Special Master's fee.

The plaintiff also alleged that, without service of summons upon her, and without her appearance therein, said action came on for hearing upon the complaint of the plaintiff (the defendant Armstrong herein) and the report of the Special Master, and thereupon the Court entered a decree on October 2nd, 1951, granting a divorce to the defendant Armstrong herein.

In her amended petition, the plaintiff alleged that in 1914, she and the defendant Armstrong started a business in which she furnished the greater part of the capital, which business was continued through their joint efforts before and after their marriage, resulting in the accumulation of property in their ownership, a part of which consisting of certificates of stock, specifically described, in six corporations issued in the name of defendant Armstrong, which the plaintiff has in her possession in Hamilton County, Ohio, but which are unendorsed by the defendant, Armstrong. She also alleges that the defendant corporations which issued said certificates will not cancel them and reissue them, without the order of a court, and, for that reason, they are made parties, so that the court may award to her such alimony as the court may deem reasonable and proper. Her prayer was for divorce and alimony.

The defendant Armstrong by answer denied that the allegations in his complaint and the testimony he gave in his action in the Eleventh Judicial Circuit in and for Dade County, Florida, was false, denied that defendant therein was not served with summons and alleged, to the contrary, that said defendant was duly served in accordance with the law of Florida, and, by reason thereof, the Court had full jurisdiction over both the subject matter and the persons of the plaintiff and defendants.

The defendant Armstrong denied that he had been guilty of gross neglect of duty or extreme cruelty, denied that

plaintiff had been a dutiful and faithful wife, denied that she had assisted in any way in the accumulation of property, but that such property was accumulated by his own efforts, and that much of said property had been placed in their joint names solely because of the plaintiff's insistence, and that in various ways from such properties in their joint names she has received and will receive substantial sums. He also alleges that the withdrawal by the plaintiff of his property from the safety deposit box constituted embezzlement under the laws of Florida, of which he asked the Court to take judicial notice.

The defendant's answer contained a general denial of all of plaintiff's amended petition of good conduct on her part and misconduct on his part, and concludes with a prayer that her amended petition be dismissed and that she be required to deliver to him all the certificates of stock and jewelry in her possession, and that the court make an equitable division of the money withdrawn from their joint bank accounts.

A reply placed in issue all the affirmative allegations of the answer.

At the trial of these issues, evidence was introduced from which the conclusion could be reasonably deduced that the plaintiff in this action had been guilty of gross neglect of duty and extreme cruelty, and that the Florida decree, granting a divorce to the defendant herein, was supported by sufficient evidence. On the other hand, evidence of equal cogency was introduced from which it could be deduced that he had been guilty of gross neglect of duty and extreme cruelty, and that the decree awarding a decree to the plaintiff herein outweighed the evidence of the defendant, and would have justified a divorce in her favor. At any rate, this Court would not be justified in reversing the decree in her favor on the ground that it was manifestly against the weight of the evidence.

The complete record of the action in which the divorce was granted to the defendant herein by the Florida Court was introduced at the trial in this case. This record includes the bill of complaint, the amendment to the bill, a complete transcript of the testimony taken before the Special Master, the Special Master's report, and the final decree. From this record, it is manifest that the plaintiff in that case sought to vest the court with jurisdiction not only over the marital status, so that it might be dissolved, bu also endeavored to bring all the property and property rights, both real and personal, wherever located, within the Court's jurisdiction. The decree that was entered was equally broad. By it, the plaintiff in that action was granted a divorce on the ground of gross neglect of duty and extreme cruelty, was awarded title to all the real estate and personal property within the territorial jurisdiction of the Court, the defendant was found to have forfeited all right to alimony, and was ordered to return all property she had taken from the bank accounts and safety deposit vaults, and was enjoined from interfering with plaintiff's right to such property. The court recited that it took notice that some property was located in Ohio, and, for that reason, the Ohio courts would determine the rights in such property, and, in view of that situation, made a specific finding that both parties were and had been for many years citizens and residents of the State of Florida, that the matrimonial domicile was in the State of Florida, and that the plaintiff herein left the matrimonial domicile without right in 1950, and had no right to establish a legal domicile elsewhere, and that in law and fact her domicile was still that of her husband in the State of Florida.

The record shows (and it is admitted) that this decree was entered upon constructive service alone. The defendant was not served with any process within the territorial jurisdiction of the court and she did not enter her appear-

ance in any way. The decree was entered pro confesso on her failure to appear or answer.

In the decree in the case at bar, the court expressly stated that it gave full faith and credit to the decree of divorce of the Florida Court, and, for that reason alone, denied to the plaintiff a divorce to which she would otherwise have been entitled. The court then found that the plaintiff was entitled to alimony, as prayed for, and awarded to her all the money and bonds taken by her from their joint accounts and vaults, all the jewelry and 1,250 shares of stock in General Motors Corporation. It would appear that the Court divided their property in equal shares between them.

It is manifest that the attack upon the judgment here under review results from divergent views as to the force and effect of the judgment of the Florida Court under Article IV of the Constitution of the United States, commonly referred to as the "full Faith and Credit Clause" which requires each state to give full faith and credit to the public acts, records, and judicial proceeding of every other state. The plaintiff's contentions are, that the Florida decree was obtained by fraud and perjury, which rendered it voidable by a decree of a court of chancery, and, that, therefore, it is equally vulnerable in an Ohio court of general jurisdiction, and, therefore, the Florida decree after giving it all the force and effect accorded to it by the law of that state, it is no bar to a judgment awarding her a divorce in this action. In the next place, she contends that even assuming that the divorce decree dissolved the marriage tie, and is invulnerable to attack in this action, it is, nevertheless, no bar to her action for alimony.

On the other hand, the defendant contends that as the divorce was granted to him by a court of the matrimonial domicile, from which the plaintiff had departed in violation of her marital duties, as found by that court, the decree

completely and finally dissolved the marriage ties, including also all the rights and duties of the parties incident thereto, and that the decree entered by the Florida Court expressly so provided by barring the plaintiff of all such rights.

In support of her position that the Florida divorce is no bar to the plaintiff's action for divorce, plaintiff's counsel relies upon certain Florida cases indicating that a decree of divorce by a Florida court obtained by fraud may be vacated, perhaps by the court granting it, by invoking the common law writ of coram nobis, or some statutory variation of that writ, or by an independent suit in chancery. It is not suggested that any such proceeding has been instituted. In our opinion the mere existence of such a remedy does not deprive the divorce decree of that quality of finality, entitling it to full faith and credit by the courts of other states, enjoined by the Constitution of the United States. Even the fact that this judgment might be subject to an appeal or that the time for filing a motion to vacate or for a new trial had not expired would not affect its finality or deprive it of the right to full faith and credit. 31 Am. Jur., 167 (Sec. 558). The judgment of the Florida court is, nevertheless, a final decree for divorce within the jurisdiction of the court granting it, to which full faith and credit must be given so long as it remains unreversed, unmodified, and not vacated by the courts of the state in which it was awarded. It should be noted that the trial court made no express finding that the Florida decree had been obtained through fraud and deceit.

We, therefore, hold that the trial court did not err in refusing to enter a decree of divorce for the plaintiff.

The question remains as to the effect of this Florida judgment upon the right of the plaintiff to a decree awarding her alimony. The Florida court not only assumed to grant a divorce, but also to enter a decree barring the plaintiff

from all rights based on the marital relation. And, as already noted, this was done without personal service or an entry of appearance in the action by the defendant. We are of the opinion that this attempt to deprive the defendant of a right to alimony could add nothing to the jurisdiction of the court. It is an attempt to render a personal judgment upon constructive service. Unless the dissolution of the marriage tie had the effect of destroying all rights incident to the marriage relation, express recitals certainly would not accomplish that effect. The detailed findings that the plaintiff in this action had been, and was, a recreant wife, and of no help but a hindrance to the plaintiff in the accumulation of his wealth, made by the Florida Court to serve as a predicate for the mandatory and prohibitory injunctions expressly made enforceable by contempt proceedings, which were decreed can have no greater validity than the writs by which they were enforceable. As no court has jurisdiction to enjoin and punish for contempt in the absence of personal service upon the person enjoined, this decree insofar as it attempted to exercise such jurisdiction is null and void.

But defendant's counsel contend that this Florida decree, shorn of all provisions relating to alimony, is a bar to the plaintiff's claim for alimony. They assert that a decree for divorce granted on constructive service by a court of the matrimonial domicile has that effect. It is said that it has been so decided in *Atherton* v. *Atherton*, 181 U. S. 155, and *Thompson* v. *Thompson*, 226 U. S., 551, and the latter case was cited with approval in *Estin* v. *Estin*, 334 U. S. 541, at 545. While attempts have been made to distinguish and limit the effect of the cases of *Atherton* v. *Atherton* and *Thompson* v. *Thompson*, we are of the opinion that they support the proposition for which they are cited. But we are also of the opinion that it is

more accurate to say that *Thompson* v. *Thompson* was distinguished rather than approved in *Estin* v. *Estin*.

To give to the Court of the matrimonial domicile jurisdiction greater than that acquired elsewhere by one spouse, it was necessary to invoke the common law fiction that the wife's identity was merged in that of her husband and that the domicile of his choosing was her domicile. Relaxing this rule, as was done in some cases, so as to permit the wife to change her residence so as to confer jurisdiction elsewhere of her divorce action would permit the husband, remaining at the "matrimonial" domicile, to compel her to return to that jurisdiction to defend her conduct in leaving, or allow a default, and if that jurisdiction determined that her leaving was unjustified, it could proceed to bind her by a personal judgment. This monolithic conception of the relation between husband and wife has long since ceased to be valid. By statutes and court decisions, the relation has been so altered as to give the wife almost as great freedom of action as that of the husband. In Ohio, and in most other states, for the purpose of jurisdiction to entertain her action for divorce and alimony her right is not affected by the residence of her husband. RC § 3105.04. This development of the law, without doubt, influenced the Supreme Court in cases subsequent to *Thompson* v. *Thompson* to review the subject of matrimonial domicile in its relation to the "Full Faith and Credit Clause" of the United States Constitution, and to conclude that there was no distinction in that regard between matrimonial domicile and domicile acquired by either husband or wife acting separately.

This trend became manifest with the first case of *Williams* v. *North Carolina*, 317 U. S. 287, 143 A. L. R. 1273, in which the Court said at page 1281 of the latter report that: "Moreover so far as state power is concerned no distinction between matrimonial domicile and a domicile

later acquired has been suggested or is apparent." That the statement was made after due deliberation is manifest from the statement of the court in the second case of *Williams* v. *North Carolina*, 325 U. S. 226, at 230: "In view of *Williams* v. *North Carolina*, supra, the jurisdictional requirement of domicile is freed from confusing refinements about 'matrimonial domicile.'"

And in the more recent case of *May* v. *Anderson*, 345 U. S. 528, an action seeking custody of children, originating in Ohio, the Court reviewed and reversed the judgment of the Ohio Courts giving binding effect against the wife to a judgment rendered, upon constructive service only, by a Wisconsin court, which was the matrimonial domicile of the husband. At 534 the Supreme Court of the United States said: "In *Estin* v. *Estin*, supra, and *Kreiger* v. *Kreiger*, supra, this Court upheld the validity of a Nevada divorce, obtained, ex parte, by a husband resident in Nevada, insofar as it dissolved the bonds of matrimony. At the same time, we held Nevada powerless to cut off, in that proceeding, a spouse's right to financial support under the prior decree of another state. In this case we recognize that a mother's right to custody of her children is a personal right entitled to at least as much protection as her right to alimony." From this, it would seem that the Supreme Court of the United States regarded it as settled in that court that an ex parte decree is effective to dissolve the marriage tie, and that to that extent other states must accord to it full faith and credit. Beyond that, the power of the court to adjudicate property and personal rights is dependent upon seizure of property, or personal service of summons within the territorial jurisdiction of the court.

Certainly the Ohio courts understand that this is the doctrine of *Williams* v. *North Carolina*, 317 U. S. 287, as is made manifest by the case of *Slapp* v. *Slapp*, 143 Ohio St., 105. In that case, it appeared that the husband had ob-

tained an ex parte decree of divorce in Nevada, while an action for alimony was pending in Ohio, the state of their last residence before separation. After the divorce was granted, the wife filed an amended petition, adding a cause of action for divorce to her action for alimony. The trial court found that the Nevada divorce was null and void, and thereupon granted both divorce and alimony to the wife. On appeal by both parties the Court of Appeals "gave full faith and credit" to the decree of divorce in Nevada, and reversed that part of the judgment of the Common Pleas Court which awarded a divorce to the plaintiff, Ruth E. Slapp. On the other hand, the Court of Appeals affirmed that part of the judgment of the Common Pleas Court which awarded an equal division of the property to the plaintiff. The Supreme Court affirmed the judgment of the Court of Appeals.

It is true that the divorce decree under consideration in *Slapp v. Slapp*, supra, was not granted at the domiciliary residence. It is also true that in *Anderson* v. *May*, supra, the Ohio courts gave faith and credit to a divorce decree of the domiciliary residence awarding custody of children, but they did so not because the decree was at the plaintiff's domicile, but because they decided that the children were technically present within that jurisdiction, and, for that reason, within the power of the court. And, as already pointed out, the Supreme Court of the United States expressly declined to place its reversal on any disagreement with the Ohio courts on that point, preferring to place it on the fundamental proposition that the full faith and credit required of other states by the IVth Article of the United States Constitution to an ex parte decree was limited to the dissolution of the marriage status and did not extend to an adjudication or destruction of personal and property rights incidental to the marriage relation.

We, therefore, conclude that the Court of Common Pleas did not err in its holding that the ex parte decree in the Florida case was not a bar to the plaintiff's action for alimony.

The Court divided the property of these parties in substantially equal shares between them. We have examined the record as to the manner of its accumulation, the contribution of each of the parties thereto, and the facts and circumstances of their respective situations and needs. We find no error of the court in this regard.

We find no prejudicial error in the record.

For these reasons, the judgment is affirmed.

MATTHEWS, P. J., ROSS & HILDEBRANT, J. J., concur.

APPENDIX E

COURT OF APPEALS

HAMILTON COUNTY, OHIO

No. 7826

MARY R. ARMSTRONG,

Plaintiff-Appellee,

v.

RAYMOND C. ARMSTRONG,

Defendant-Appellant,

GENERAL MOTORS CORPORATION, et al.,

Defendants.

JUDGMENT OF AFFIRMANCE

(Entered March 16, 1954)

This cause came on to be heard upon appellant's notice of appeal, appellee's notice of cross appeal, the transcript of docket and journal entries, the original papers and pleadings, the bill of exceptions, the assignments of error by appellant and appellee and the briefs and arguments of counsel, from case No. A-131101, Court of Common Pleas, Hamilton County, Ohio; on consideration whereof, the Court finds that the judgment entered does not contravene the provisions of Article IV of the Constitution of the United States and that there is no error prejudicial to the defendant-appellant, or to the plaintiff appellee in the record, proceedings and judgment in the Court below.

It is therefore ordered that the judgment of the Court of Common Pleas of Hamilton County, Ohio in said cause

be and it is hereby affirmed at the costs of the defendant-appellant herein taxed at $

It is further ordered that a special mandate issue out of this Court directed to the Court of Common Pleas, Hamilton County, Ohio to carry the judgment of this Court into effect.

The plaintiff-appellee and the defendant-appellant are each allowed their exception.

APPENDIX F

IN THE

SUPREME COURT OF OHIO

No. 33956

ARMSTRONG,

Appellee and Cross-Appellant,

v.

ARMSTRONG,

Appellant and Cross-Appellee, et al.

Divorce and alimony—Service by publication—Divorce decree against nonresident—Entitled to full faith and credit, when—Portion of decree denying alimony—Does not operate extraterritorially—Not entitled to full faith and credit—Section 1, Article IV, U. S. Constitution.

1. A divorce decree obtained against a nonresident defendant solely upon service by publication, where such service is authorized in the state granting the divorce, is entitled, under Section 1, Article IV of the Constitution of the United States, to full faith and credit elsewhere, providing such service meets the requirements of due process and the plaintiff at the time of instituting the divorce proceeding was legally domiciled in the state granting the divorce.
2. Such a divorce decree in favor of a husband, based solely on service by publication on the wife residing in another state, does not, as to a denial of alimony therein, operate extraterritorially and is not entitled to full faith and credit in such other state.

(No. 33956—Decided December 15, 1954.)

APPEAL from the Court of Appeals for Hamilton County.

This cause is concerned with the subject of divorce and alimony and is here on an appeal as of right and on the allowance of a motion to require the Court of Appeals for Hamilton County to certify its record.

Raymond C. Armstrong, appellant, hereinafter referred to as Armstrong, secured a divorce, upon constructive service of summons, from Mary R. Armstrong, appellee,

hereinafter called Mrs. Armstrong, by the decree of a court in Florida. Embodied in the decree was a denial of alimony to her. Subsequently, in February 1952, she sued Armstrong for divorce and alimony in the Court of Common Pleas of Hamilton County, Ohio, claiming that Armstrong had procured his Florida divorce by fraud and misrepresentation. He entered his appearance by way of answer in which he denies many of the allegations of the petition. This was met by reply.

The cause was heard on considerable evidence and both the Armstrongs testified. Mrs. Armstrong was refused a divorce on the basis that Armstrong's Florida decree was conclusive, but she obtained an award of alimony. Such decree was affirmed on appeal by the Court of Appeals.

Mrs. Armstrong, in her cross-appeal, complains that she was erroneously denied a divorce in Ohio and the allowance of alimony *pendente lite* and expenses, whereas Armstrong contends that she was precluded from obtaining any alimony award in Ohio by reason of his Florida decree, which denies her the right to alimony.

It appears that both parties are natives of Ohio and were married in this state in 1917. They engaged in business here until the early 1920's when they sold the business and removed to Florida. Later, real property was bought on the Isle of Pines, and from 1925 to 1928 the Armstrongs occupied themselves in growing fruit and vegetables there. Then in 1928 they went to the City of Miami, Florida. Residence properties were purchased, into one of which they moved, and they became taxpayers and registered voters of that community.

However, they did not sever their ties with Ohio. Two farms, one in Indiana and one in this state, were purchased and the Armstrongs generally spent the summer months in Ohio looking after their property interests. The title to some of the property accumulated over the years was held

jointly, while other property was held by Armstrong individually.

Matrimonial difficulties developed between the Armstrongs, and in the summer of 1948, while they were at their Clermont County, Ohio, farm, an altercation occurred and Mrs. Armstrong departed. She took from a jointly held safety deposit box certain securities owned by Armstrong which she could not negotiate but kept and withdrew the major portion of a sizeable money deposit in a joint bank account. A reconciliation took place in a matter of weeks, and on September 27, 1948, at Asheville, North Carolina, Armstrong signed a written statement in which he assumed some blame for their domestic troubles.

Friction again developed between the Armstrongs, and in October 1950 Mrs. Armstrong left their Miami, Florida, home and returned to Ohio, where she remained.

On April 16, 1951, Armstrong filed suit for divorce in the Circuit Court of Dade County, Florida. Service by publication only was made on Mrs. Armstrong, but she employed an Ohio attorney and actually knew about the proceeding. However, she did not return to Florida and made no appearance in the suit. Subsequently, as has been noted, a decree of divorce was granted Armstrong, wherein Mrs. Armstrong was denied alimony and the title to the Florida real estate was vested in Armstrong. What transpired afterwards has previously been narrated.

Messrs. Headley, Sibbald & Taft, for appellee and cross-appellant.

Messrs. German, Silversteen & Davis, for appellant and cross-appellee.

ZIMMERMAN, J. From Armstrong's standpoint "the sole question in this case is whether the courts of Ohio, under Article IV of the Constitution of the United States, are compelled to give full faith and credit to the entire decree

for divorce rendered in Florida, the matrimonial domicile of the parties, which decree denied alimony to the wife, or whether the courts of Ohio can recognize the decree for divorce to the husband, but still award alimony to the wife."

Of course, Armstrong answers the first part of the question in the affirmative and the latter part in the negative.

In support of his position, Armstrong relies primarily on the case of *Thompson* v. *Thompson*, 226 U. S., 551, 57 L. Ed., 347, 33 S. Ct., 129.

In that case it was held that a court in Virginia, the matrimonial domicile of the parties, had jurisdiction to render a decree of divorce in favor of the husband on constructive service of summons on the wife, and that such decree was entitled to "full faith and credit" in the District of Columbia. It was further held that such decree foreclosed any right of the wife to sue for alimony in the District of Columbia for the reason that the holdings of the Virginia courts are that a wife who is the offender can not be allowed alimony on a divorce decree obtained by her husband.

The facts and situation in the *Thompson case* are not the same as those in the instant case. From a reading of the bill of complaint for divorce filed by Armstrong in the Circuit Court of Dade County, Florida, against his wife, it is plain that he charged her with conduct which in the divorce statutes of this state are termed "extreme cruelty" and "gross neglect of duty." No statute or decision in Florida has been called to our attention which states that a Florida court may not award alimony to a wife divorced by her husband because of her aggression, unless she has committed adultery. See *Cowan* v. *Cowan*, 147 Fla., 473, 2 So. (2d), 869. Compare *Fiesler* v. *Fiesler*, 83 Ohio St., 200, 93 N. E., 899.

It may be here interposed that since the decision of the United States Supreme Court in the case of *Williams* v.

North Carolina, 317 U. S., 287, 87 L. Ed., 279, 63 S. Ct., 207, 143 A. L. R., 1273, the factor of "matrimonial domicile" is no longer regarded as important: See annotation, 143 A. L. R., 1294.

The rule of general acceptance is that a divorce decree obtained against a nonresident defendant solely upon constructive service, if such service is authorized in the state granting the divorce, is entitled to full faith and credit elsewhere, providing such constructive service meets the requirements of due process and the plaintiff at the time of instituting the divorce proceeding was legally domiciled in the state granting the divorce. *Williams* v. *North Carolina*, *supra*; annotation, 28 A. L. R. (2d), 1306.

But may a divorce decree secured by a husband even in the so-called matrimonial domicile, where service of summons on the wife, then residing in another state, has been by publication only, deny the wife any right to alimony, so that such denial must be recognized as conclusive in another jurisdiction. We do not think so.

We would approve the rule that such a decree as it concerns the denial of alimony to the wife is not entitled to full faith and credit in another state. A decree of that kind is one *in personam* and requires either an appearance by, or lawful personal service on, the wife, in order to have extraterritorial effect. In other words, in a situation of the kind under discussion, that part of the decree granting a divorce may be immutable, but that part which purports to fix alimony rights is not, and alimony may be the subject of adjudication in the court of another state at a future time. What has been said finds sanction in the Ohio cases of *Cox* v. *Cox*, 19 Ohio St., 502, 2 Am. Rep., 415; *Doerr* v. *Forsythe, Admx.*, 50 Ohio St., 726, 35 N. E. 1055, 40 Am. St. Rep., 703; *Weidman* v. *Weidman*, 57 Ohio St., 101, 103, 48 N. E., 506, 507; *Bay* v. *Bay*, 85 Ohio St., 417, 426, 427, 98 N. E., 109, 110; and *Slapp* v. *Slapp*, 143 Ohio St., 105, 54 N. E. (2d), 153.

Although not directly in point from a factual standpoint, we believe the following cases also lend support to the position we have taken: *Estin* v. *Estin*, 334 U. S., 541, 92 L. Ed., 1561, 68 S. Ct., 1213, 1 A. L. R. (2d), 1412; and *May* v. *Anderson*, 345 U. S., 528, 97 L. Ed., 1221, 73 S. Ct., 840. And see the concurring opinion of Mr. Justice Douglas in *Esenwein* v. *Pennsylvania, ex rel Esenwein*, 325 U. S., 279, 89 L. Ed., 1608, 65 S. Ct., 1118, 157 A. L. R., 1396.

In the case of *Pawley* v. *Pawley* (Florida), 46 So. (2d), 464, 28 A. L. R. (2d), 1358, certiorari denied, 340 U. S., 866, 95 L. Ed., 632, 71 S. Ct., 90, the husband secured a Cuban decree of divorce against his wife, a resident of Florida, on the ground of desertion, which constitutes a ground for divorce in Florida. Personal service of notice of the action was made on the wife in Florida. The Supreme Court of Florida recognized the Cuban decree as valid under the principles of comity but held that the Cuban court did not and could not pass upon the right of the wife to alimony since no personal jurisdiction had been secured over her, and that, therefore, she was not barred from maintaining an action for alimony in Florida.

Consequently, we are in agreement with the judgments of both the lower courts herein. Armstrong's Florida divorce decree dissolved the marriage relation between him and his wife, and Mrs. Armstrong could not thereafter successfully maintain an action in Ohio to have that decree set aside and to obtain a divorce for herself in this state; but the Florida court had no jurisdiction over the person of Mrs. Armstrong and that court could not by its decree effectively preclude her from obtaining an alimony award in Ohio.

The judgment of the Court of Appeals is affirmed.

Judgment affirmed.

WEYGANDT, C. J., MIDDLETON, TAFT, HART, STEWART and LAMNECK, JJ., concur.

APPENDIX G

IN THE

SUPREME COURT OF OHIO

No. 33956

MARY R. ARMSTRONG,

Plaintiff-Appellee,

v.

RAYMOND C. ARMSTRONG,

Defendant-Appellant;

GENERAL MOTORS CORPORATION, et al.,

Defendants-Appellees.

JUDGMENT OF AFFIRMANCE

(Entered December 15, 1954)

This cause came on to be heard upon the transcript of the Record of the Court of Appeals of Hamilton County, and was argued by counsel. On consideration whereof, it is ordered and adjudged by this court, that the judgment of the said Court of Appeals be, and the same is hereby, affirmed; and it appearing to the court that there were reasonable grounds for this appeal it is ordered that no penalty be assessed herein.

It is further ordered that the appellees recover from the appellant their costs herein expended taxed at $.

ORDERED, That a special mandate be sent to the Court of Common Pleas of Hamilton County, to carry this Judgment into Execution.

ORDERED, That a copy of this entry be certified to the Clerk of the Court of Appeals of Hamilton County, "for entry."

DENIAL OF RE-HEARING

(Entered January 5, 1955)

Upon consideration of the above application for hearing, it is ordered by the Court that rehearing be, a the same hereby is, denied.

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IN THE

Supreme Court of the United States

October Term, 1954

No. 38

RAYMOND C. ARMSTRONG,

Petitioner,

v.

MARY R. ARMSTRONG,
GENERAL MOTORS CORPORATION, et al.,

Respondents.

REPLY BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

ROBERT N. GORMAN,
STANLEY A. SILVERSTEEN,
JAMES W. HENGELBROK,
808 Traction Building,
Cincinnati 2, Ohio,

JULIUS R. SAMUELS,
918 First Natl. Bank Bldg.,
Cincinnati 2, Ohio,

Attorneys for Petitioner.

THE JOHNSON & HARDIN CO., LAW PRINTERS
CINCINNATI, OHIO

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IN THE

Supreme Court of the United States

October Term, 1954

No. 645

RAYMOND C. ARMSTRONG,

Petitioner,

v.

MARY R. ARMSTRONG,
GENERAL MOTORS CORPORATION, et al.,

Respondents.

REPLY BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

There is nothing in *Williams* v. *North Carolina*, 325 U. S. 231; that overrules *Thompson* v. *Thompson*, 226 U. S. 551. See *Estin* v. *Estin*, 334 U. S. 541, 546, footnote 4. The *Williams* case merely *extended* the right to a spouse to obtain a divorce outside of the matrimonial domicile, but it in no way *limited* the powers of the courts of the matrimonial domicile to fully and completely adjudicate the marital difficulties.

The respondent now takes the position that the Florida court did not have jurisdiction on the theory that the denial of an award of alimony was *in personam*. However, the court in Florida in this case found that Mrs. Armstrong, the respondent, was a resident of Florida, that

there was substantial property in Florida, and on those grounds assumed jurisdiction (See Appendix 5a, Petition for Writ of Certiorari).

The Florida court could have awarded alimony to respondent and the decree would have been enforcible against the property in the state. *Pennington* v. *Fourth National Bank*, 243 U. S. 269. The action was one clearly *quasi in rem*: Cf. *Boone* v. *Bank of Wachovia Trust Co.*, 163 F. (2d) 809 (C. A. D. C.); *Burkhard* v. *Circuit Court*, 146 Fla. 457.

The court however, found that because of her misconduct, Mrs. Armstrong, the respondent, was not entitled to any alimony or rights in the Florida property. The Florida courts are not required to allow alimony in all cases, but under the provisions of Section 65.08 of the Florida Statutes, where a wife is guilty of misconduct, whether alimony is to be allowed rests in the sound discretion of the chancellor. *Phinney* v. *Phinney*, 77 Fla. 850.

In the recent case of *McIntyre* v. *McIntyre*, 53 So. (2d) 824 (Fla.), it was held that the wife's removal to another state is insufficient to rebut the presumption as to her domicile being that of her husband. "To effect a change of domicile there must be a removal and an intent."

The Florida Court held that the residence, citizenship and matrimonial domicile of both the parties in this case at the time of the divorce on October 2, 1951, was Florida. By an action filed February 1, 1952, Mrs. Armstrong, the respondent, was permitted to attack that finding collaterally, and obtain alimony in Ohio. The Ohio courts did not give full faith and credit to the entire judgment in Florida, but permitted it to be impeached. Since property was situate in Florida, since Mrs. Armstrong under Florida law was still a resident of Florida, the courts of that state had full power to adjudicate the marital difficulties even

though Mrs. Armstrong was served only by publication. That was substantially the rule laid down in *Thompson* v. *Thompson*, 226 U. S. 551, which the Ohio courts seek to overturn.

The Constitution does not abridge the right of a state to deal with property and its own residents, even though they have fled elsewhere. Because of the matrimonial domicile, Florida had a substantial continuing jurisdiction. A removal from the Florida domicile did not cause the courts of that state to lose jurisdiction, particularly when respondent had actual knowledge of the proceedings and declined to appear.

After reviewing the cases, Justice Pitney said in the *Thompson* case:

> "the state of Virginia had jurisdiction over the marriage relation, and the proper courts of that state could proceed to adjudicate respecting it upon grounds recognized by the laws of that state, although the wife had left the jurisdiction and could not be reached by formal process."

Here we have similar facts, and Florida as well as Virginia had sufficient dominant interests to completely adjudicate the marital affairs of those who had a matrimonial domicile within its borders. The respondent had ample opportunity to contest, but declined to do so. She should not be permitted at a later date to relitigate the issues in Ohio.

Respectfully submitted,

ROBERT N. GORMAN,
STANLEY A. SILVERSTEEN,
JAMES W. HENGLEBROK,
JULIUS R. SAMUELS,
Attorneys for Petitioner.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 38

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v.

MARY R. ARMSTRONG,
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BRIEF FOR THE PETITIONER

ROBERT N. GORMAN,
JAMES N. HENGELBROK,
808 Traction Building,
Cincinnati 2, Ohio,

JULIUS R. SAMUELS,
918 First National Bank Bldg.,
Cincinnati 2, Ohio,

Attorneys for Petitioner.

THE JOHNSON & HARDIN CO., LAW PRINTERS
CINCINNATI, OHIO

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IN THE

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BRIEF FOR THE PETITIONER

OPINION BELOW

The opinion of the Supreme Court of Ohio is reported in 162 Ohio St. 406, 123 N. E. (2nd) 267.

JURISDICTION

The judgment of the Supreme Court of Ohio was entered on December 15, 1954, and an application for re-hearing filed in accordance with Rule XX of the Rules of the Supreme Court of Ohio was denied on January 5, 1955. The petition for certiorari was filed on March 9, 1955, and an order granting certiorari was entered April 25, 1955. The jurisdiction of this Court is invoked under the provisions of U. S. Code, Section 1257 (3).

STATUTES INVOLVED

The first section of Article IV of the Constitution of the United States is primarily involved:

"Section 1. Full Faith and Credit.—Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

FLORIDA

The sections of the Florida statutes provide:

"Ch. 65 Sec. 65.06. Bills of divorce may be brought against defendants residing out of the state, and service shall be effected upon them as in other cases in chancery.

"Ch. 48 Sec. 48.01. Service of process by publication may be had in any of the several courts of the state and upon any of the parties mentioned in 48.02 in any suit or proceedings:

"4. For divorce or annulment of marriage;

"10. In any other suit or proceeding, not hereinabove expressly mentioned, wherein personal service of process or notice is not required by the statutes or constitution of this state or by the constitution of the United States."

OHIO

Section 3105.03:

"Except in an action for alimony alone, the plaintiff shall have been a resident of the state at least one year immediately before filing the petition. Actions for divorce or for alimony shall be brought in the county of which the plaintiff is and has been a bona fide resident for at least ninety days immediately preceding

the filing of the petition, or in the county where the cause of action arose. The court of common pleas shall hear and determine the case, whether the marriage took place, or the cause of divorce occurred, within or without the state."

QUESTIONS PRESENTED

1. Did the Ohio courts err in refusing to give full faith and credit to the entire decree rendered by the courts of Florida in granting a divorce to the petitioner and denying the respondent alimony?

2. Could the Ohio court award alimony to the respondent out of stock of the General Motors Corporation when the Florida court had denied the respondent any portion of property, which had a situs in Florida, without violating the full faith and credit clause of the Constitution of the United States?

As to the first question, petitioner maintains that since the decree was entered at the matrimonial domicile of the parties in Florida, and respondent had *actual* notice of the proceedings, due process of law was satisfied, and the decree should have been afforded entire full faith and credit by the Ohio courts.

The record clearly shows that Armstrong was at all times a resident of the State of Florida, and that he had registered in his own name 2200 shares of the stock of General Motors (R. 125). The record also shows that both the parties owned real estate, a home at 922 Northwest Eighth Street Road, in Miami, Florida (R. 33, 125, 245), so that the Florida court could have enforced an alimony award against Armstrong as to the property even in his absence. The Florida court had jurisdiction in this cause, both to award a decree for divorce to petitioner, and to deny alimony to respondent.

STATEMENT OF CASE

Raymond C. Armstrong and his wife, Mary C. Armstrong, were married on June 18, 1917 at Cincinnati, Ohio. In 1922 or early 1923 they left Ohio and took up their residence in Miami, Florida. Aside from a short period of time spent in the Isle of Pines, they have ever since been residents, voters and taxpayers of Miami, Florida, where they claimed the homestead exemption (R. 33, 62, 220). While they owned a farm in Indiana and later one in Ohio, the undisputed evidence is that since 1928 their matrimonial domicile has been at Miami, Florida. They owned a home, paid taxes and voted in Miami, Florida, which was the only domicile of both until the latter part of 1950 (R. 239, 247).

Friction developed between the Armstrongs, and in October of 1950 Mrs. Armstrong, the respondent, left Florida and came to Ohio. On April 16, 1951, Armstrong filed suit in the Circuit Court of Dade County, Florida, praying for divorce, denial of alimony and other relief (R. 199-212). Service was obtained by publication and a copy of the petition was mailed to Mrs. Armstrong in accordance with the laws of Florida (R. 240, 246).

However, the respondent did not return to Florida. Instead on May 8, 195[illegible] she brought an action in partition in Ohio for a partitioning and an accounting of the real estate situate in Ohio, which action is still pending. However, after receiving notice by publication and notice by mail of Armstrong's action for divorce, filed in Florida, her attorney in Ohio, on May 22, 1951, wrote to his attorney in Florida as follows (R. 303; Pltf.'s Ex. J):

> "I do not intend to enter Mrs. Armstong's appearance in the complaint for divorce. I presume that complaint will result in a decree, and that you will prosecute that matter to an early conclusion. That

being so, the allegations of the complaint are such that I shall be compelled in proceedings to be filed here to claim the decree was procured upon false allegations. Thus it now appears these parties are in and headed into costly litigation that could have been avoided if Mr. Armstrong had given serious thought to the testimony available here and elsewhere relating to the manner in which these parties accumulated their holdings and had been more reasonable in his ideas of how the matter should be settled."

Under the Ohio law Mrs. Armstrong would not have been considered a resident of Ohio for the purpose of filing an action for divorce until November 10, 1951 (R. 46). Section 3105.03, Ohio Revised Code (formerly Section 8003-3, Ohio General Code, formerly Section 11980, Ohio General Code).

On October 2, 1951, upon presentation of the report of the Master Commissioner, the Circuit Court of the Eleventh Judicial District of Dade County, Florida, *granted Armstrong a divorce and denied Mrs. Armstrong alimony* (R. 246-9). That decree said in part:

"This court, therefore, finds the defendant has not come into this court in good faith or made any claim to the equitable conscience of the court and has made no showing of any need on her part for alimony. It is, therefore, specifically decreed that no award of alimony be made to the defendant and that the legal and equitable title to the real property above described was vested in the plaintiff as of the date of the purchase of the same by the plaintiff and the said legal title to said property be and the same is hereby vested in fee simple absolute in the plaintiff, Raymond C. Armstrong, without further deed or conveyance from the defendant."

Subsequently, in fact, four months later on February 1, 1952, Mrs. Armstrong filed an action for divorce and ali-

mony in the Court of Common Pleas of Hamilton County, Ohio, against Armstrong, claiming that the Florida decree had been obtained by fraud, and praying for a divorce and alimony (R. 1-6). Armstrong entered his appearance, and in his answer among other things set up that the "Florida court had full and complete jurisdiction over the subject matter" and persons and that the Florida decree precluded any action in Ohio (R. 7).

The significant portion of the answer reads:

. . . . . .

"Defendant admits that on or about the sixteenth day of April, 1951, in case No. 140311, in chancery, on the docket of the Circuit Court of the Eleventh Judicial District, in and for Dade County, Florida, he filed a complaint in which he prayed for a divorce from plaintiff and in which complaint he made the allegations set forth on the second page of plaintiff's amended petition and admits that he appeared before a special master in chancery to whom said cause had been referred by said court and gave his testimony, tending to prove said allegations; and that thereafter said special master filed with said court his report, incorporating therein a transcript of the defendant's said testimony, in which report said special master found that this defendant was entitled to a decree for divorce; and that thereupon said cause came on to be heard by said court, upon said complaint, the testimony taken before the special master and upon the master's report, upon consideration whereof, on or about October 2, 1951, entered a decree granting a divorce in favor of this defendant from plaintiff. Defendant denies that the allegations set forth in his complaint in his suit for divorce as aforesaid were false; denies that the testimony that he gave in said cause was false, but on the contrary, says that said allegations and testimony were true.

"Defendant denies that plaintiff was not served with summons in said action pending in the Dade County

> Circuit Court, said defendant having been duly legally served with summons in said action according to the law of the state of Florida, and that by reason thereof said court had full and complete jurisdiction over the subject matter of said action and over the persons of this defendant and plaintiff."

Upon hearing, the Court of Common Pleas of Hamilton County, Ohio, held that it had to give full faith and credit to the divorce decree entered in Dade County, Florida, but under the doctrine of divisible divorce "held that were it not for the Florida decree Mrs. Armstrong would be entitled to a divorce," and proceeded to allow her alimony, consisting of considerable cash, jewelry and 1250 shares of General Motors stock, or approximately half of the property owned by Armstrong. This decree was entered July 18, 1953 (R. 16-19).

On appeal both the Court of Appeals of the First District of Ohio and the Supreme Court of Ohio affirmed the judgments *in toto*. It is interesting to note that in the Court of Appeals that court reviewed the evidence which had been introduced in both the Florida courts and the Ohio courts and made this statement in reference to the evidence:

> "At the trial of these issues, evidence was introduced from which the conclusion could be reasonably deduced that the plaintiff (Mrs. Armstrong) in this action had been guilty of gross neglect of duty and extreme cruelty, and that the Florida decree granting a divorce to the defendant herein, was supported by sufficient evidence. On the other hand, evidence of equal cogency was introduced from which it could be deduced that he had been guilty of gross neglect of duty and extreme cruelty, and that the decree awarding a decree to the plaintiff herein outweighed the evidence of the defendant, and would have justified a divorce in her favor." (Petition for Writ of Certiorari, p. 14a.)

We point this out to show that the Florida decree awarding a divorce to Armstrong and denying alimony to respondent was based on sufficient evidence, and the only reason it was not recognized in its entirety by the courts of Ohio, is that there was no personal service on Mrs. Armstrong, the respondent. The Ohio courts held that since service was only by publication in Florida, they could still award alimony to Mrs. Armstrong, the respondent, and attempted to distinguish *Thompson* v. *Thompson*, 226 U. S. 551. The courts did not consider that actual notice was given to respondent, and that she had full opportunity to be heard in the courts of the matrimonial domicile where the bulk of the property was located.

SUMMARY OF ARGUMENT

I

The Ohio Court Erred in Refusing to Give Full Faith and Credit to the Entire Florida Decree.

The Florida decree (October 2, 1951) not only granted a divorce to the petitioner, but it also made a finding that the respondent was not entitled to alimony, and denied her alimony. The Ohio decree (July 18, 1953) gave full recognition to the Florida divorce, but refused to recognize the Florida decree denying alimony, and awarded 1250 shares of General Motors stock to the respondent as and for alimony. The Ohio decree was affirmed on appeal.

The Court below withheld full faith and credit from the *entire* Florida decree, because service was obtained by publication only, for two reasons:

1. A reliance on the ancients and functionless distinction between *in personam* and *in rem*, a distinction which this Court discarded as question-begging in *Mullane* v. *Hanover Bank & Trust Co.*, 339 U. S. 306, 312.

2. A misinterpretation of *Williams* v. *North Carolina*, 347 U. S. 287, as depriving the state of the matrimonial domicile of any interest in the financial aspect of a broken marriage. The misinterpretation of the *Williams* case is in direct contradiction to the holding of this Court in *Thompson* v. *Thompson*, 226 U. S. 551, a case on all fours with the instant case, and a case which this Court noted with approval as late as *Estin* v. *Estin*, 334 U. S. 541, 546, footnote 4.

To repudiate the *Thompson* case, and its approval in the *Estin* case, would impose chaos on a confused situation. Husbands and wives would thus be permitted to skip about the forty-eight states, litigating property rights piece-meal, in the forums of their choosing, or preventing litigation, until the opposite party could be starved into submission.

The existence of a marriage in Florida for over twenty uninterrupted years, the casting of ballots and paying of taxes there; the ownership of real and personal property in Florida, the unjustified flight from Florida of the wife, her service by publication, coupled with actual knowledge of the Florida proceedings, and her express refusal to defend the Florida action, all constitute a compliance with the rule of "minimum contracts" and of "traditional notions of fair play and substantial justice," and satisfy due process. *International Shoe Co.* v. *Washington*, 326 U. S. 310, 316; *Milliken* v. *Meyer*, 311 U. S. 457; 463; *Scholnik* v. *National Air Lines, Inc.*, 219 Fed. (2nd) 115, 118 (C. A. 6). Due process having been satisfied, the entire Florida decree is entitled to full faith and credit.

II

The Ohio Court Was Powerless to Award Alimony Out of the General Motors Stock.

The situs of this stock was Florida, that of its registered owner, the petitioner. *First National Bank of Bos-*

ton v. *Maine*, 284 U. S. 312, 328, 329; *Curry* v. *McCanless*, 307 U. S. 357.

Had the petitioner fled Florida, the respondent could have enforced an award of alimony against this stock and property in Florida. *Pennington* v. *Fourth National Bank*, 243 U. S. 269; *Boone* v. *Bank of Wachovia*, 163 Fed. (2nd) 809 (C. A. D. C.). Since the respondent here fled Florida, the Florida decree, which found her *not* entitled to alimony from this property, is entitled to recognition extraterritorially. If a court has the power to exclude unknown owners from stock ownership (*Standard Oil Co.* v. *New Jersey*, 341 U. S. 428; *Mullane* v. *Hanover Bank & Trust Co.*, 339 U. S. 306, 314), certainly the Florida court had the right to exclude a fleeing wife from ownership in this stock and deny alimony. The interests of the state of Florida were of such importance they were dominant, and, therefore, gave that state the right to adjudicate the marital status and property rights.

ARGUMENT

I

The Ohio Court Erred in Refusing to Give Full Faith and Credit to the Entire Decree in Florida.

The Florida divorce decree entered on October 2, 1951, in which the petitioner, Armstrong, was granted a divorce, and his wife was denied alimony, was entitled to be given full faith and credit by the Ohio courts under the decision of this Court in *Thompson* v. *Thompson*, 226 U, S. 551. As we shall show, it did not present a situation where the doctrine of "divisible divorce," as expressed in the two *Williams* cases (317 U. S. 287 and 325 U. S. 286) and *Estin* v. *Estin*, 334 U. S. 541, was applicable.

We concede that when a husband goes to Nevada, establishes a residence, and obtains a divorce after constructive

service, the wife can still maintain an action for alimony, support or separate maintenance, in a number of states, including Ohio. See *Cox* v. *Cox*, 19 Ohio St. 502; *Slapp* v. *Slapp*, 143 Ohio St. 105. In some jurisdictions, alimony or maintenance to the wife is denied on the ground that such an award does not survive divorce. See *Gullet* v. *Gullet*, 149 Fed. (2nd) 17 (C. A. D. C.); *Rodda* v. *Rodda*, 183 Ore. 140, 200 Pac. (2nd) 616; *Loeb* v. *Loeb*, Vt. , 114 Atl. (2nd) 518.

In neither instance is a question of full faith and credit involved, but the question of whether a wife is able to obtain alimony after an *ex parte* divorce is controlled purely by local law. Florida holds to the doctrine that where the divorce is granted in another state an action for alimony does not survive, although the rule might be different if the divorce is obtained in a foreign country. Cf. *Stewart* v. *Stewart*, 155 Fla. 158, 155 So. 114, and *Pawley* v. *Pawley*, 46 So. (2nd) 464 (Fla.).

Nor is *May* v. *Anderson*, 345 U. S. 528, applicable, as it involved a case of the custody of a child, which Justice Frankfurter so well pointed out in his separate concurrence.

However, in this case, the husband remained in the matrimonial domicile, which was Florida, and obtained a divorce decree which also denied the wife alimony, while the wife fled to Ohio. Under *Thompson* v. *Thompson*, 226 U. S. 551, "the wife by her conduct forfeits her right to alimony under the laws of the state of the matrimonial domicile." *Estin* v. *Estin*, 334 U. S. 541, 546, Footnote 4.

The *Thompson* case has never been overruled, and this Court must have felt it was still in effect when Justice Douglas took occasion to distinguish it in the *Estin* case.

The Supreme Court of Ohio refused to follow the *Thompson* case, but applied the doctrine of "divisible divorce" because service was only by publication, and "a decree of that kind is one *in personam* and required either an appear-

ance by, or a lawful personal service on the wife in order to have extra-territorial effect." *Axmstrong* v. *Armstrong*, 162 Ohio St. 406.

The Supreme Court of Ohio did not examine closely into the salient facts. First, while service was only by publication on the wife as respondent, nevertheless she had *actual* notice of the action, and refused to appear. Secondly, the Florida court found that both parties were citizens and residents of Florida, which was the matrimonial domicile, and finally, the principal properties of Armstrong, from which alimony could be awarded, were in Florida.

In *Barber* v. *Barber*, 323 U. S. 77, 86, this Court said:

> "The judgment of a court of general jurisdiction of a sister state duly authenticated is *prima facie* evidence of the jurisdiction of the court to render it, and the right which it purports to adjudicate." *Adam* v. *Saenger*, 303 U. S. 62 and cases cited.

Under this rule Ohio was required to give full faith and credit to the entire Florida degree (see R. 239-249) unless it could find that the respondent was denied alimony without due process of law contrary to the Fourteenth Amendment. This, therefore, requires an examination of the decree itself to ascertain if the Florida decree was subject to a collateral attack in the Ohio courts.

In the Florida decree entered by the Circuit Court of Dade County on October 2, 1951, it is found:

> "This court makes a specific finding that both the plaintiff and the defendant herein were citizens and residents of the State of Florida, and that when the defendant left the matrimonial domicile in October 1950, she did so without cause or without the legal right to separate and set up her own domicile. Under these circumstances the Court finds that the wife defendant, Mary R. Armstrong did not have the right

to separate and claim a separate legal domicile, and in truth and in fact her domicile was that of her husband." (R. 248, 249.)

It is perfectly clear that if Mrs. Armstrong had entered her appearance or been personally served the validity of the Florida decree could not be questioned. *Davis* v. *Davis*, 305 U. S. 32.

Is the law such that personal service is in all cases necessary to support a decree either awarding alimony to a wife or denying alimony to her? We contend, particularly when she leaves from the matrimonial domicile where the property is located, and when she is duly served by publication, and has actual notice of the pendency of the proceedings, but deliberately refuses to appear and a decree denying her alimony or maintenance is entered, due process of law is afforded.

Distinctions between decrees *in personam* and *in rem* and attempts to classify actions on such categories have long since lost their validity. Such distinctions do little more than beg the issue. See *Mullane* v. *Hanover Bank & Trust Co.*, 339 U. S. 306, 312.

It has been settled that personal service is not necessa to obtain a valid personal judgment against a resident a state. The rule laid down in *Pennoyer* v. *Neff*, 95 U. S. 714, was confined generally to nonresidents, who are served constructively. However, today, provided the method of imparting notice to a defendant is reasonable and has been strictly followed, personal service is not essential to effective service on a nonresident.

The broad language of *Pennoyer* v. *Neff*, 95 U. S. 714, construed as prohibiting acquisition of personal jurisdiction over any person outside of the state, has been reexamined in *Milliken* v. *Meyer*, 311 U. S. 457, and it was held that domicile alone was sufficient for the purpose of

a personal judgment by means of appropriate substituted service. This Court at page 462 said:

> "Domicile in the state is alone sufficient to bring an absent defendant within the reach of the state's jurisdiction for purposes of a personal judgment by means of appropriate substituted service."

[Followed in *Allen* v. *Superior Court*, 41 Cal. (2nd) 306, 259 Pac. (2nd) 905; *Myrick* v. *Superior Court*, 41 Cal. (2nd) 519, 261 Pac. (2nd) 255.]

The best summary of the present state of the law is found in *Scholnik* v. *National Air Lines, Inc.*, 219 Fed. (2nd) 115, 118 (C. A. 6):

> "Historically, the jurisdiction of a court to render a judgment in personam against a defendant depended upon the presence of the defendant within the territorial jurisdiction of the court. *Pennoyer* v. *Neff*, 5 Ott. 714, 95 U. S. 714, 24 L. Ed. 565. The strictness of that rule has given away somewhat to the present view that due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. *International Shoe Co.* v. *State of Washington*, 326 U. S. 310, 316, 66 S. Ct. 154, 90 L. Ed. 95; *Milliken* v. *Meyer*, 311 U. S. 457, 463, 61 S. Ct. 339, 85 L. Ed. 278."

These cases show that the rule of "minimum contacts" and "traditional notions of fair play and substantial justice" are not just applicable to foreign corporations, but apply with equal force to nonresident individuals as well. Extra-territorial service upon an absent resident, who is otherwise subject to the jurisdiction of a state, has been recognized as conferring jurisdiction over his person in conformity with due process of law.

It is our position that a valid *ex parte* decree, rendered by a court at the matrimonial domicile, which under the law of that place has the effect of terminating the wife's right to alimony, is entitled to recognition in that respect, particularly when she had actual notice of the action by service, and deliberately refused to appear. Cf. 28 A. L. R. (2nd) 1393.

The Circuit Court of Dade County, Florida, found that the matrimonial domicile of the parties was not only in Florida, but that they were both citizens and residents of Florida. The record shows that the respondent was not only served by publication in accordance with the laws of Florida (R. 246), but that she had *actual notice* of the pendency of the action, and deliberately refused to appear and contest (R. 303).

In *McIntyre* v. *McIntyre,* 53 So. (2nd) 824 (Fla.), the court held that "to effect a change of domicile there must be a removal and an intent." The fact that Mrs. Armstrong left Florida would not rebut the presumption that her domicile was still in Florida particularly when the property was still in the state. In fact the Florida court found that she was still domiciled there even though she had fled to Ohio.

Coupled with that fact, the principal real estate was in Florida, and all of the stocks, including 2250 shares of General Motors Corporation stock, were owned by petitioner, who was a resident of Florida. Had Armstrong, the petitioner, fled from Florida it is clear that Mrs. Armstrong could have enforced an alimony decree in Florida against the property there. *Pennington* v. *Fourth National Bank,* 243 U. S. 269; *Burkhard* v. *Circuit Court,* 146 Fla. 457; *Lucian* v. *Southern Ohio Bank & Trust Co.,* 156 Fla. 370.

We maintain that the service, coupled with the actual notice of the pendency of the action, and the fact the property was in Florida made it clear that the denial of alimony

was after due process of law, and does not "offend traditional notions of fair play and substantial justice."

If the notice given the respondent, Mrs. Armstrong, satisfied due process, then clearly the Florida decree was entitled to be afforded complete full faith and credit by the courts of Ohio.

The Supreme Court of Ohio stated that the factor of "matrimonial domicile" is no longer regarded as important since the decision in *Williams* v. *North Carolina*, 317 U. S. 287. However, such a conclusion can not be justified from a reading of the cases decided by this Court. The doctrine of matrimonial domicile has not been entirely discarded by this Court. Cases such as *Estin* v. *Estin*, 334 U. S. 541, and *Krieger* v. *Krieger*, 334 U. S. 555, permitted recognition of migratory divorces. It thus took away from the state of the matrimonial domicile *exclusive* jurisdiction in divorce. The cases were never intended, however, to limit the state of the matrimonial domicile in its right to entirely settle marital difficulties of its own citizens, and thus overrule *Thompson* v. *Thompson*. That is why Mr. Justice Douglas was particular in distinguishing the facts in the *Thompson* case in *Estin* v. *Estin*. We maintain that Florida, as the matrimonial domicile, particularly when the defendant had actual notice and opportunity to appear, had the right to settle all marital difficulties, and its decrees should be given full faith and credit by all other states. In a splendid article, J. H. C. Morris of Oxford University points out that this Court has never abandoned completely the significance of matrimonial domicile in divorce and alimony actions. See "*Divisible Divorce*," 64 Harv. Law Rev. 1287.

If the right of the state of the matrimonial domicile to fully adjudicate marital difficulties were abandoned, let us examine the chaotic conditions that will result. A wife living in Cincinnati, Ohio, could go to Kentucky, West Vir-

ginia, or Indiana and stay there so that service could be made only by publication, and the husband could never get his marital matters completely settled. In fact, no state in the country could completely settle them. If the right of the matrimonial domicile to completely settle all marital difficulties is denied, the result to the wife would be more tragic. A husband living with his wife in Kentucky, the matrimonial domicile, could take his stocks and bonds and cross the river to Cincinnati, Ohio. Since the wife could only obtain service by publication, she could never obtain any alimony as the courts of the state of the matrimonial domicile could not adjust the financial affairs between the husband and wife.

We maintain that a simple rule of granting entire full faith and credit to the decrees of the matrimonial domicile, particularly when the fleeing spouse had actual notice and full opportunity to appear, should be adopted.

Due process of law is not dependent upon personal service. Rather it depends upon the quality and nature of the contacts, ties or relations to the fair and orderly administration of the laws of the state. If the motorist by merely using the highways of the state consents to jurisdiction in tort actions (*Hess* v. *Powlowski*, 274 U. S. 352), certainly married couples, who live for twenty-one years in one jurisdiction, have likewise consented to the juurisdiction of the courts of that state to adjudicate their rights. Such jurisdiction should continue until one or the other has acquired a domicile elsewhere. It should not be defeated merely by the flight of one spouse, particularly when that spouse has actual notice of the pendency of the action. The acquisition of a new domicile was never claimed by Mrs. Armstrong, the respondent, either when the Florida Action was filed, or when it was tried.

Pawley v. *Pawley* (Florida), 46 So. (2nd) 464, cited by the Supreme Court of Ohio, deals with a divorce obtained

in Cuba, a foreign country and not a sister state. As the opinion shows it involves a question of comity, and not one of "full faith and credit" under constitutional demand. It involved a case where the husband, a citizen of the United States, fled to a foreign country, and did not remain in the matrimonial domicile as the petitioner did in this case. The earlier case of *Stewart* v. *Stewart*, 155 Fla. 158, states the correct rule when a situation such as now before the court arises.

To affirm the decision of the Supreme Court of Ohio would upset the well-established rules, not only by limiting the jurisdiction of the courts of the matrimonial domicile, but also by saying that what satisfied due process as to notice in other civil actions does not apply in alimony actions. The *Thompson* case has been a precedent for many years, and well it should be. In that case, after reviewing the law, Justice Pitney said:

> ". . . the state of Virginia had jurisdiction over the marriage relation, and the proper courts of that state could proceed to adjudicate respecting it upon grounds recognized by the laws of that state, although the wife had left the jurisdiction and could not be reached by formal process."

Here we have even stronger facts, because here was actual notice, and Florida as well as Virginia had sufficient dominant interests to completely adjudicate the marital affairs of those who had a matrimonial domicile within its borders. When the adjudication was made after the respondent had notice and opportunity to contest, it should be final, and respondent at a later date should not be permitted to relitigate either the issues of divorce or of alimony in the courts of Ohio.

II

The Ohio Court Could Not Award Alimony Out of the Stock of General Motors Corporation Owned by Petitioner.

The Ohio court, after recognizing the validity of the decree for divorce in Florida, applied the doctrine of divisible divorce, and as alimony ordered petitioner to transfer to the respondent 1250 shares of the capital stock of General Motors Corporation (R. 19). We contend that in any event the court had no jurisdiction to make such an award, if it gave full faith and credit to the decree of October 2, 1951, entered in Florida.

The decree in Florida shows that this stock was in the name of the petitioner (R. 247-248). Despite the fact that the certificates were purloined by the respondent, nevertheless the situs of the stock under the maxim of *mobilia sequuntur personam*, was in Florida, the domicile of the owner. Cf. *First National Bank of Boston* v. *Maine*, 284 U. S. 312, 328, 329; *Curry* v. *McCanless*, 307 U. S. 357.

Had Armstrong been absent from Florida Mrs. Armstrong could have, if she had grounds, enforced an alimony award in Florida. Personal service is not necessary to enforce an alimony award against real estate or intangible property in the state. *Pennington* v. *Fourth National Bank*, 243 U. S. 269; *Boone* v. *Bank of Wachovia*, 163 Fed. (2nd) 809 (C. A. D. C.).

It would seem that the converse of this should be true. The Florida court specifically denied the respondent any alimony out of the real estate and property of the petitioner. In fact the Florida court ordered respondent to return the stocks and bonds to petitioner (R. 248). We contend that because of such a holding the Court of Common Pleas of Hamilton County, Ohio, did not have the right to make an award to the respondent of 1250 shares

of stock of the General Motors Corporation. That was a relitigation of the issue determined in Florida. The Florida court having jurisdiction over the *res* had a right to determine ownership whether the respondent had been personally served with summons or not.

If a judgment forfeiting stock of unknown owners after service by publication is entitled to full faith and credit (*Standard Oil Company* v. *New Jersey*, 341 U. S. 428; *Mullane* v. *Hanover Bank & Trust Co.*, 339 U. S. 306, 314), then certainly a fleeing resident can be denied any interest in property even though service is only by publication. As said by the late Justice Jackson in *Mullane* v. *Hanover Bank & Trust Co.*, 339 U. S. 306, 314:

> "Personal service has not in all circumstances been regarded as indispensable to the process due residents, and it has more often been held unnecessary as to nonresidents."

The decree in Florida held that "the stock certificates and bonds registered in the name of the plaintiff, the possession of which has been taken by the defendant against the consent of the plaintiff are the property of the plaintiff" and the defendant (the respondent) was ordered to return them (R. 248). The Ohio court then proceeds to award alimony in the amount of 1250 shares of General Motors stock to the respondent (R. 18) contrary to the decree in Florida that no alimony be awarded out of the property (R. 249).

We maintain that Florida had a right to enter such a decree as to real estate and intangibles within its jurisdiction. Florida had a right to tax Armstrong on the intangibles he owned, even though the actual certificates were outside of the state. It had a right to adjudicate the inter-

ests of the parties in property, and that adjudication was entitled to full faith and credit.

This is particularly true since the respondent, Mrs. Armstrong, did not claim any property interest in the certificates, herself, but only the right to be paid or awarded alimony out of them (R. 5). Ohio is not, and has never been a community property state, and the only claim of respondent was that as a wife she had helped to contribute to the funds her husband had accumulated (R. 4).

Under these circumstances when Mrs. Armstrong refused to return to Florida and litigate the issues of alimony, she was foreclosed as to any rights not only as to real estate, but also as to any intangibles which were owned by the petitioner. The issue once litigated could not be re-litigated in Ohio.

CONCLUSION

If the service by publication and the mailing of notice of an action pending in the matrimonial domicile of the parties satisfied due process, then obviously the respondent should not have been permitted to re-litigate the issue of alimony in the courts of Ohio. The courts of Ohio under such circumstances were required under the Constitution of the United States to give entire full faith and credit to the entire Florida decree.

However, when it is pointed out that the principal property holdings were in Florida, the matrimonial domicile, the Ohio courts should not permit a fleeing spouse to make a collateral attack upon a binding decree of a sister state.

If this cause is not reversed, then merely by flight a husband or wife can prevent the other party from completely settling all marital difficulties. The matrimonial domicile of the parties is the one place where binding decrees should be recognized by all sister states.

We respectfully submit, the judgments of the Ohio courts pertaining to alimony for respondent must be reversed.

Respectfully submitted,

ROBERT N. GORMAN,
JAMES N. HENGELBROK,
808 Traction Building,
Cincinnati 2, Ohio,

JULIUS R. SAMUELS,
918 First National Bank Bldg.,
Cincinnati 2, Ohio,
Attorneys for Petitioner.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 38

RAYMOND C. ARMSTRONG,

Petitioner,

v.

MARY R. ARMSTRONG,
GENERAL MOTORS CORPORATION, et al.,

Respondents.

REPLY BRIEF FOR PETITIONER, RAYMOND C. ARMSTRONG

ROBERT N. GORMAN,
JAMES W. HENGELBROK,
808 Traction Building,
Cincinnati 2, Ohio,

JULIUS R. SAMUELS,
918 First National Bank Bldg.,
Cincinnati 2, Ohio,
Attorneys for Petitioner.

THE JOHNSON & HARDIN CO., LAW PRINTERS
CINCINNATI, OHIO

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REPLY BRIEF FOR PETITIONER, RAYMOND C. ARMSTRONG

There is only one question involved in this case—whether the Florida decree of October 2, 1951, granting Armstrong a divorce and denying alimony to Mrs. Armstrong, should have been given entire full faith and credit by the Ohio courts. The question is set forth on page 3 of the brief of the respondent; but then respondent presents many extraneous and miscellaneous matters which are not in the case.

The Ohio courts have already held that the decree granting the petitioner a divorce, entered in Florida on October 2, 1951, must be given full faith and credit. The only other question is whether that part of the decree entered in

Florida on October 2, 1951, denying alimony to the respondent, Mrs. Armstrong, should have been given full faith and credit. If it was entered after due process, it follows it must be given full recognition by the Ohio Courts. If it was not entered after due process, then the Ohio Courts in failing to recognize a portion of the decree were correct, and the doctrine of divisible divorce was properly applied. We submit, that even though there was service only by publication, we have shown that the respondent had full opportunity to appear in the courts of the matrimonial domicile and that the property was located there. A decree entered pursuant to such facts was one in compliance with due process requirements, and it was one entitled to full recognition by the Ohio courts.

COMMENTS ON STATEMENTS OF FACTS AND CLAIMS OF RESPONDENT

As the case was presented both to the Court of Appeals of Ohio, and to the Supreme Court of Ohio, the question and issue was:

"After Armstrong, the petitioner, has been granted a decree for divorce in Florida on October 2, 1951, which decree also denied alimony to Mrs. Armstrong, the respondent, was Mrs. Armstrong prevented by the Constitution of the United States from filing a petition in Ohio, on February 1, 1952, and from securing alimony in Ohio; or, were the Ohio courts bound to give entire full faith and credit to the Florida decree? In other words, could Mrs. Armstrong relitigate the issue of alimony in Ohio, after the decree had been granted in Florida, which was the matrimonial domicile; and when the respondent had full knowledge of the Florida proceedings, and complete opportunity to appear?"

Instead of answering this question, the respondent details facts, which were hotly disputed, and had nothing to do with the decision.

Both the Court of Appeals of Ohio and the Supreme Court of Ohio held that Florida was the matrimonial domicile of both parties (Petition for Writ of Certiorari 110a-122a, 162 Ohio St. 406, 123 N. E. [2d] 267). This finding was amply supported by the evidence as both parties owned a home, lived, paid taxes and voted in Florida.

Nor is the issue of fault of the parties before the court. Attempts to set forth a letter written back in 1948, and alleged ill treatment, are not in issue. All of these incidents were disputed by Armstrong both in Florida and in Ohio to show the fault was on her part (R. 130-138, 160, 221-232, 258 et seq., 265 et seq.).

The Court of Appeals of Ohio significantly said that "the Florida decree was supported by sufficient evidence" (Petition for Writ of Certiorari 14a), and the Supreme Court of Ohio likewise proceeded upon the same assumption. Since the Florida decree was based on sufficient evidence, the only question was whether the respondent could still obtain alimony, since she was served only by publication. That is the one and only issue before the court.

Likewise, it is clear that since both parties were residents of Florida, the courts of that state had full jurisdiction to hear and determine the cause. There was no fraud relating to the jurisdiction or the subject matter of the action. Consequently, efforts to complain of a master commissioner's fee or to relitigate the facts as to fault are entirely extraneous. The record contains the proceedings in Florida, and as the Court of Appeals of Ohio said there was sufficient evidence to support the decree for divorce in Dade County, Florida on October 2, 1951.

It, therefore, is totally unnecessary to make any reply to Subdivisions II, III and VI in the argument of respondent's brief as they are apparently inserted for the purpose of confusing the issue.

An effort is likewise made to attempt to show that trial counsel in this cause agreed with the petitioner by taking a sentence out of context (Brief of Respondent, p. 17). This was not a waiver, and was made only after the trial court had held that an alimony action would survive the Florida decree by saying that "Even if the court finds they are divorced, she is still entitled to alimony" (R. 129). The trial brief referred to, did not in any way waive the issues raised by the pleadings, that full faith and credit should be given to the entire decree in Dade County, Florida.

The answer herein filed on January 2, 1953 clearly and unequivocally states in the third paragraph that the Florida court "had full and complete jurisdiction over the subject matter of said action and over the persons of this defendant and plaintiff" (R. 7). At the end of his answer, petitioner specifically pleaded that, because of the foregoing allegations, including that as to the Florida decree," plaintiff is not entitled to a divorce or *alimony* from defendant, and. . . ." (R. 11, emphasis added.) The issue of whether the Florida decree was full, complete and final preventing further litigation of the question of alimony, was raised by the pleadings, and was the only issue considered by the reviewing courts.

While the trial memorandum referred to by respondent on 17 is not before the court, it cannot be denied that the effect of *Thompson* v. *Thompson*, 226 U. S. 551 was fully and completely argued before the court on a motion for a new trial. The question of whether the decree in Dade County, Florida should be given full faith and credit has never been withdrawn or waived, and has been argued as the principal matter in all three of the lower courts.

THE OHIO COURT ERRED IN GRANTING ALIMONY

A. Full Faith and Credit.

Despite the strained argument of respondent along other lines, the question resolves itself into one question: was the Ohio court correct in denying full faith and credit to that part of the decree denying alimony in Dade County, Florida because it was an action *in personam* and the defendant was only constructively served?

It must be conceded that if the Florida decree litigated the matter of divorce, and effectively litigated the question of alimony by its decree on October 2, 1951, the respondent could not four months later relitigate the matter of alimony in Ohio.

Respondent seems to rely heavily upon *Williams* v. *North Carolina*, 325 U. S. 231; *Estin* v. *Estin*, 334 U. S. 541; *Pawley* v. *Pawley*, 46 So. (2nd) 464 (Fla.); and *Hopson* v. *Hopson*, 221 Fed. (2nd) 839 (C. A. D. C.). In all four cases there is a distinction in the facts. In each of those cases *the husband* left the matrimonial domicile, established a residence in another jurisdiction, and filed the divorce action there. In all four cases the validity of the divorce was upheld by the court, but the court held an action for alimony or a previous order of alimony survived. This gave rise to the theory of "divisible divorce."

Here, the husband remained in the matrimonial domicile. While the wife was only served by publication, she had full knowledge and notice of the proceedings, and deliberately refused to challenge them even though they were in the jurisdiction where she spent her married life. It can be seen that there is no similarity between the two sets of facts. We know of no decision where a court has failed to grant entire full faith and credit to a decree denying alimony in the matrimonial domicile where full opportunity to appear was afforded. *Thompson* v. *Thompson*, 226 U. S.

251 has been distinguished, but it has never been and should not be overruled.

Respondent places reliance on *May* v. *Anderson*, 345 U. S. 528, but a case involving custody of children is by its very nature ambulatory. As was so well pointed out by Justice Frankfurter, "property, personal claims and even the marriage status generally give rise to interests different from those relevant to the discharge of a State's responsibility to children within her borders" (345 U. S. 528, 536). The child is the one primarily involved, and a rule of res adjudicata or full faith and credit can hardly be applied against a child not *sui juris*. The interest of the parent is secondary.

Distinctions between *in personam* and *in rem* actions are largely artificial, and are not controlling. *Mullane* v. *Hanover Bank & Trust Co.*, 339 U. S. 306, 314; *Milliken* v. *Meyer*, 311 U. S. 457. If opportunity to appear is afforded in the matrimonial domicile to the absent spouse that should be sufficient. As said in *Scherrer* v. *Scherrer*, 334 U. S. 343, 350:

> "Insofar as cases originating in the federal courts are concerned, the rule has evolved that the doctrine of *res adjudicata* applies to adjudications relating either to the jurisdiction of the person or of the subject matter where such adjudications have been made in proceedings on which those questions were in issue, and in which *the parties were given full opportunity to litigate*." (Emphasis supplied.)

In this case, Mrs. Armstrong knew of the litigation, and deliberately with full knowledge declined to appear in Florida (R. 303), despite the public policy rule in Florida which awards attorneys fees and expenses to a wife, even if she be denied alimony. *Stern* v. *Stern*, 50 So. (2nd) 149 (Fla.). The case was then heard in Florida. The Court of Appeals in Ohio held specifically:

> "At the trial of these issues, evidence was introduced from which the conclusion could be reasonably deduced that the plaintiff (Mrs. Armstrong) in this action had been guilty of gross neglect of duty and extreme cruelty, and that the Florida decree, granting a divorce to the defendant herein, was supported by sufficient evidence" (Petition for Writ of Certiorari 14a).

In other words the Ohio court found that the Florida court had before it sufficient evidence to award Armstrong a decree for divorce for gross neglect and extreme cruelty. It would follow as a matter of course, that there was sufficient evidence to deny Mrs. Armstrong alimony. When that decree was entered on October 2, 1951 (R. 246), the entire marital rights of the parties had been adjudicated. Ohio could not re-open the case on Mrs. Armstrong's petition filed February 1, 1952, four months later. If she could have re-opened the case in Ohio four months later what would prevent her from re-opening the case fifteen years later, say in Oregon or Maine? The public policy that litigation must end sometime, would dictate otherwise.

We know that had the wife personally appeared in Florida she would have been bound, *Davis v. Davis*, 305 U. S. 32; *Scherrer* v. *Scherrer*, 334 U. S. 343. However, we maintain that where the action was instituted in the matrimonial domicile, and the absent spouse, although served by publication, had knowledge of the action and was afforded full opportunity to appear, the same rule should apply. This court has never held to the contrary, and in *Thompson* v. *Thompson* specifically held it would apply. As we shall show had respondent gone to Florida, the court could have allowed her expenses and attorneys' fees.

The cause of action arose in Florida, the matrimonial domicile, where the law as to alimony may have been different from that of Ohio. The Ohio courts could well have

said to Mrs. Armstrong that, since she fled from her matrimonial domicile, Florida and not Ohio should determine her right to alimony. Not to render to Florida, the state where there was a dominant interest, that right was to disregard its judgments and orders, and to attempt to review by independent action what the Florida courts had determined.

The Ohio courts were bound to give full faith and credit to the Florida order under the circumstances just as Florida does to decrees in Ohio. Cf. *Riehl* v. *Riehl* (Fla.) 60 So. (2nd) 35. The Ohio courts should have said in effect that since the matrimonial domicile was in Florida, and since the respondent had full knowledge of the proceedings, Florida was the state where all matters could be settled. It having done so in a manner that amply afforded due process, the Ohio courts are powerless to relitigate the matter, but must give full faith and credit to the entire decree entered in Dade County, Florida on October 2, 1951.

B. The Property in Florida.

Respondent insists that the Ohio courts had jurisdiction to divide the General Motors stock. The stock was always in the name of Raymond C. Armstrong (R. 5, 120). Under the law in Florida the court has said that "we hold to the rule that intangible personal property in contemplation of law accompanies the owner." *Beverly Beach Properties* v. *Nelson*, 68 So. (2d) 604, 611 following *Nelson* v. *Miller*, 201 F. (2d) 277 (C. A. 9).

Despite the fact that the respondent, Mrs. Armstrong, purloined the certificates unendorsed, since Armstrong continued to live in Florida, the situs of the stock was still in that state. Such fact gave the Florida court jurisdiction to deal fully with the General Motors stock, and her wrongfully taking the certificates unendorsed to Ohio, did not oust the Dade County, Florida court of jurisdiction. It would

be strange to hold that a wife, by wrongfully converting property of the husband, and fleeing, could deprive the matrimonial domicile of jurisdiction, and she could, at a later date, shop for a forum, and vest that distant forum with jurisdiction to determine rights in the converted property.

Upon hearing the evidence the Dade County Circuit Court held:

> "In Florida a wife may be guilty of conversion or even embezzlement of her husband's property as held by the Supreme Court of Florida in *State* v. *Herndon*, 27 So. 2d, 833, 158 Fla., 115. The court, therefore, finds that the stock certificates and bonds registered in the name of the plaintiff, the possession of which has been taken by the defendant against the consent of the plaintiff, *are the property of the plaintiff*, and the defendant is hereby directed and specifically ordered to return the said stock certificates and bonds to the plaintiff within fifteen (15) days from the date of the entry of this decree or be subject to an order for contempt and such other relief that may be deemed proper by this court" (R.248). (Emphasis supplied.)

And again the court in its order stated:

> "It is, therefore, specially decreed that *no award of alimony* be made to the defendant and that the legal and equitable title to the real property above described was vested in the plaintiff as of the date of the purchase of the same by the plaintiff and the said legal title to said property be and the same is hereby vested in fee simple absolute in the plaintiff, Raymond C. Armstrong, also known as Ray Armstrong, without further deed or conveyance from the defendant" (R. 249). (Emphasis supplied.)

This clearly showed that the Florida court not only recognized ownership of the stock in the petitioner, Armstrong,

but knowing those facts denied any alimony to the respondent.

The Ohio courts were bound to recognize the right of Florida courts to determine ownership of the stock, and the right to deny any alimony out of the stock to the respondent. However, the Ohio court made the entire award of alimony in General Motors Stock (R. 19). The award to respondent was 1,250 shares of General Motors stock, which after the shares have been recently split is worth today approximately $170,000.00.

Respondent seems to argue that the parties and the stock certificates being in Ohio, courts of that state had jurisdiction and control over the stock. That might be true had Florida not previously litigated the same matter. If the Florida court could have awarded Mrs. Armstrong alimony out of the stock even in Armstrong's absence, it seems axiomatic it had jurisdiction to deny any alimony out of the stock. Cf. *Pennington* v. *Fourth National Bank*, 243 U. S. 269.

THE FLORIDA COURT HAD JURISDICTION TO DENY ALIMONY

The rather astounding argument is made that under the Florida statutes (Chapter 65, Sections 65.07) an action for alimony can only be invoked by the wife, and therefore, the court could not deny alimony to the wife on the petition of the husband.

This is not the law of Florida, but was conjured up in desperation in the mind of counsel for the respondent. In the case of *Stern* v. *Stern*, 50 So. (2nd) 119 (Fla.) the wife filed suit, and on the cross petition the husband was granted a decree, and the *wife denied any alimony*. On appeal the upper court assessed as costs the wife's attorneys fees, but affirmed the order denying the wife alimony.

The claim that the chancellor in Florida was compelled to grant alimony to a wife is without the slightest foundation. An award or denial of alimony in Florida as in nearly every state rests within the sound discretion of the court as shown by the case of *Stern* v. *Stern*, supra. However, the wife could be assured of her expenses in the litigation had she returned to Florida to contest the action and to claim alimony.

We have heretofore shown that distinctions between *in personam* actions and those *in rem* are largely artificial. In fact divorce and alimony actions are often placed in a middle category as *quasi in rem*.

Viewed from that situation it is clear that the Florida court had the right to deny the wife alimony. If the wife had sued in Florida, the wife could have obtained alimony out of the property that was in the jurisdiction. By the same reasoning the Florida court could properly deny alimony to a wife out of property in the jurisdiction. In either event the matter would be res adjudicata and final and other states would have to give the finding full faith and credit.

The real question in the cause is whether the denial of alimony by the Dade County Circuit Court of Florida was entered after due process. The matrimonial domicile of the parties was in Florida, and Mrs. Armstrong had full knowledge of the proceedings. She deliberately refused to appear in the Florida courts, but sought to re-establish a domicile in Ohio. Before the domocile was established, the court in Florida acted on October 2, 1951, and she took no appeal from the decree entered on that day.

Her attack on the Florida decree in Ohio was, therefore, a collateral one. Since she had had more than "minimum contacts" with Florida, and notice and opportunity to appear had been afforded, the procedure in Florida conformed with "traditional notions of fair play and substantial jus-

tice" and was in accord with due process. The Florida court clearly had jurisdiction to deny alimony, and constitutionally that decree became immune from collateral attack in a sister state.

CONCLUSION

While the respondent has attempted to inject extraneous issues into the cause, the sole question is whether or not the denial of alimony to the respondent by the Dade County Circuit Court of Florida on October 2, 1951 was entered after due process. We have shown that not only was Florida the matrimonial domicile of the parties, but the state where their property was legally located. While only served by publication, the respondent had full opportunity to appear and deliberately refused to do so. Florida had a dominant interest in the marital relationship, and the right to completely settle all difficulties.

After that decree was entered, the respondent, had no right to choose another forum to relitigate the issues. The Ohio court in permitting her to do so, recognized that full faith and credit must be given to the decree for divorce to petitioner, but denied full faith and credit to the remainder of the decree. Such action violated the provisions of Article IV of the United States Constitution.

If the decree in Florida is not recognized in its entirety mere flight by a spouse can defeat the only jurisdiction where marital affairs can be completely settled. Such a rule would cause chaos, and defeat the right of a husband to fully adjudicate matters, and compel wives to follow fleeing husbands to other states to secure alimony or support. Such a rule would permit the fleeing spouse to select the forum in which alimony problems would have to to be litigated, and then only after the fleeing spouse had established a new domicile. We submit that the doctrine of "divisible divorce" was never intended to establish such a situation.

It was intended to apply only where the wife did not have full opportunity to appear and defend, in an action instituted outside the state of the matrimonial domicile. Likewise, the doctrine of "divisible divorce" was not intended to apply where the question of alimony has already been adjudicated, especially where alimony has been adjudicated in a state where there were dominant interests. Otherwise, what might not be grounds for alimony in Florida might entitle the wife to alimony in Ohio. "Forum shopping" otherwise would become decisive in alimony actions.

Respectfully submitted,

ROBERT N. GORMAN,
JAMES W. HENGELBROK,
808 Traction Building,
Cincinnati 2, Ohio,

JULIUS R. SAMUELS,
918 First National Bank Bldg.,
Cincinnati 2, Ohio,
Attorneys for Petitioner.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 38

RAYMOND C. ARMSTRONG,

Petitioner,

v.

MARY R. ARMSTRONG,
GENERAL MOTORS CORPORATION, et al.,

Respondents.

SUPPLEMENT TO PETITIONER'S REPLY BRIEF

ROBERT N. GORMAN,
JAMES W. HENGELBROK,
808 Traction Building,
Cincinnati 2, Ohio,

JULIUS R. SAMUELS,
918 First National Bank Bldg.,
Cincinnati 2, Ohio,
Attorneys for Petitioner.

THE JOHNSON & HARDIN CO., LAW PRINTERS
CINCINNATI, OHIO

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SUPPLEMENT TO PETITIONER'S REPLY BRIEF

The matter contained in the Supplement to the Brief of the respondent filed on the day of argument is not in the record. It apparently is an attempt to show that petitioner waived in some way the issue. This matter was never raised in either the Court of Appeals in the First District of Ohio, or in the Supreme Court of Ohio. The issue of full faith and credit and res adjudicata was raised by the respondent in its petition, and was invoked by the petitioner throughout (See R. 7, 10, 11, Pet. for Cert. pp. 16a to 18a, 25a, 29a). It was fully argued on a motion to strike filed by the petitioner (R. 14), and on a motion for new trial,

which respondent well knows. Since the Supplement forms no part of the record and since petitioner has not agreed it should be part of the record, it cannot form any basis for a decision in the case.

The so called Supplement filed by respondent omits the argument which is entitled "The Florida Divorce Decree Is Binding Upon Plaintiff, Is Res Adjudicata, and Cannot Be Attacked Collaterally," consisting of nearly nine typewritten pages. The part quoted was written after the trial court indicated it would allow alimony even though full faith and credit was given to the Florida divorce decree (R. bottom 129).

A reading of the record shows that practically all of the testimony of respondent related to events occurring in 1917 and 1918 by relatives and friends rather than about incidents occurring during the marriage. It was clear why respondent went to Ohio and took the certificates of stock with her from Florida. She wanted the matter, once adjudicated, to be re-adjudicated in a forum of her own choosing, rather than in Florida, their matrimonial domicile.

Respectfully submitted,

ROBERT N. GORMAN,
JAMES W. HENGELBROK,
808 Traction Building,
Cincinnati 2, Ohio,

JULIUS R. SAMUELS,
918 First National Bank Bldg.,
Cincinnati 2, Ohio,
Attorneys for Petitioner.

No. 645

In the

Supreme Court of the United States

October Term, 1954

RAYMOND C. ARMSTRONG,
Petitioner,

vs.

MARY R. ARMSTRONG,
GENERAL MOTORS CORPORATION, et al.;
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

HEADLEY, SIBBALD & TAFT,
WALTER K. SIBBALD,
906 First Natl. Bank Bldg.,
Cincinnati 2, Ohio.
Attorneys for Respondent,
Mary R. Armstrong.

COURT INDEX PRESS INC. — Law Printers — 809 Walnut St., Cincinnati, O

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Mary R. Armstrong, one of the respondents, opposes the granting of a writ of certiorari for the reasons hereinafter set forth.

STATEMENT OF CASE

Raymond C. Armstrong and Mary R. Armstrong (nee Donovan) are natives of Hamilton County, Ohio. About 1914 they began in a small way a business in which they applied rubber tires on vehicles. Mary Donovan furnished part of the initial capital for that business through the sale of a diamond ring which belonged to her and a loan which she obtained from a relative.

She worked with Armstrong in establishing that business, without compensation, until they were married in the year 1917; and, thereafter, until the business was sold about the year 1923. Mrs. Armstrong actively worked in the business. The business was successful and out of its earnings they invested in General Motors stock. After the business was sold they removed to Florida, and shortly thereafter to the Isle of Pines where they purchased land and engaged in growing fruits and vegetables until a hurricane drove them out. Subsequently, they acquired real estate in Hamilton and Clermont Counties in Ohio and in Miami, Florida, and until they finally separated in October, 1950, for the most part they spent their winters in a residence in Miami and their summers, sometimes as late as Thanksgiving, in a residence they maintained in Clermont County, Ohio. Their real estate holdings in Ohio and in Florida were jointly held, as were their bank accounts, which were in Ohio banks, except for a small account in Miami. Notwithstanding difficulties which they encountered in the stock market crash of 1929, they were able to hold their General Motors stock, which, through stock dividends, had increased to a holding of 2250 shares when this litigation began.

In the summer of 1948 while they were living on their farm near Goshen in Clermont County, Mr. Armstrong hit his wife with the butt end of a revolver and knocked out some of her teeth, as a result of which they separated. Mrs. Armstrong for the purpose of protecting herself, in obtaining a proper property settlement, at that time took into her own possession, from safety deposit boxes held in their joint names, the General Motors stock certificates and the other stocks involved in this litigation, together with a large part of the bank accounts theretofore held in their joint accounts. Mr. Armstrong was notified at once that it was her purpose to hold what she had taken into her

possession until a division of their holdings could be agreed upon. Negotiations for such a settlement extended over a period of several weeks and before a settlement was reached they decided to go back together and from that time until October of 1950 they lived together in Miami, Florida and in Hamilton and Clermont Counties, in Ohio.

As a part of their reconciliation Mrs. Armstrong returned to their joint accounts a part of the money she had withdrawn from the banks and also paid the attorneys' fees which each had incurred while they were separated; and Mr. Armstrong gave to his wife the following signed statement: (Ex. 1 R. 189)

> "Ashville, N. C., Sept. 27, 1948
>
> I, Raymond C. Armstrong, solemnly before God swear that I love my wife, Mary R. Armstrong, and am assuring her of this because of a terrible misunderstanding. I shall never, never again bring us to the brink of divorce because I know my wife is and has always been working for my best interest and is all a good and faithful wife should be. I shall never bring up unpleasant subjects which have caused her so much worry in the past. Just as soon as possible after I arrive in Cincinnati I shall discontinue all legal actions which are pending and drop all charges I have placed against her. I shall do my utmost to make my wife happy in the future. I have not done so in the past. The stocks and moneys and war bonds which are now in the process of litigation she, Mary R. Armstrong, is to keep until such time as she decides to put them as they were before July 1, 1948. The jewelry she possesses is her's alone. I make the above statements of my own free will.
>
> RAYMOND C. ARMSTRONG,
> Ashville, North Carolina
> Sept. 27, 1948"

In October, 1950, Armstrong severely beat his wife and she thereupon left Miami and returned to Cincinnati, rented an apartment and notified Armstrong that she had established a residence in Cincinnati and would continue to live here. The negotiations for a property settlement were resumed, and when an agreement could not be reached, the appellant filed his complaint in the Florida court in which he sought a divorce.

Mr. Armstrong did not tell his attorneys anything about the agreement he had signed in Ashville, but on the contrary falsely and fraudulently signed and swore to his complaint that the respondent as a part of their 1948 reconciliation had promised to return the securities and the bank accounts to him and had not done so. The fraud thus practiced upon the Florida court was such that in October, 1951, the Florida court entered a decree granting Armstrong a divorce, upon the conclusion reached by the court in its decree that Mrs. Armstrong's retention of the securities and bank accounts was without his consent, and was illegal to the extent that she was guilty of conversion or embezzlement of her husband's property.

After the expiration of one year from the time she established her separate domicile in Cincinnati, Mrs. Armstrong on whom there was constructive service only in the Florida divorce action and who had entered no appearance therein, on February 1, 1952, commenced this action for divorce and alimony, in which she charged the appellant with gross neglect of duty, extreme cruelty, and with falsely and fraudulently obtaining the Florida divorce. In her amended petition the respondent pleaded the facts entitling her to an equitable division of the corporate stocks which the parties had accumulated; and in her prayer sought such equitable division; and, also, alimony out of the petitioner's share.

While his Florida divorce action was pending, the petitioner commenced in the Hamilton County, Ohio Common Pleas Court an action against his wife in which he sought a judgment requiring her to deliver to him the corporate stocks.

The respondent's action for a divorce and a property settlement and the petitioner's action for the delivery of the stocks, though not consolidated, were tried together (R. 22).

The Trial Court found that but for the divorce decree entered in Florida, the respondent was entitled to a divorce; and, as alimony, allowed her certain cash, bonds and jewelry; and ordered the respondent to cause to be transferred to her 1250 shares of the General Motors stock.

THE FLORIDA COURT HAD NO JURISDICTION TO ALLOW OR DENY ALIMONY

The petitioner specifies as his sole claim of error that the Supreme Court of Ohio erred in not giving full faith and credit to that part of the Florida decree as follows:

> "The Court, therefore, finds that the stock certificates and bonds registered in the name of the plaintiff, the possession of which has been taken by the defendant against the consent of the plaintiff, are the property of the plaintiff, and the defendant is hereby directed and specifically ordered to return the said stock certificates and bonds to the plaintiff within fifteen (15) days from the date of the entry of this decree or be subject to an order for contempt and such other relief that may be deemed proper by this Court.
>
> "This Court takes recognition of the fact that litigation is now pending in the State of Ohio relative to the recovery of these stocks and bonds as well as the settlement of other matters concerning property rights between the parties. This Court recognizes that the

> Courts of Ohio will have the ultimate determination of the question of property rights where the property itself is in the State of Ohio, but in that regard this Court makes a specific finding that both the plaintiff and the defendant herein were citizens and residents of the State of Florida and had been for many years, the matrimonial domicile was the State of Florida, and that when the defendant left the matrimonial domicile in October of 1950, she did so without cause or without the legal right to separate and set up her own domicile. Under those circumstances the Court finds that the wife defendant, MARY R. ARMSTRONG, did not have the right to separate and claim a separate legal domicile and in truth and in fact, her domicile was that of her husband.
>
> "This Court, therefore, finds the defendant has not come into this Court in good faith or made any claim to the equitable conscience of the Court and has made no showing of any need on her part for alimony. It is, therefore, specifically decreed that no award of alimony be made to the defendant * * *."

which he claims was a denial of alimony. The Florida court had no jurisdiction to include the foregoing in its decree.

An appearance, or personal service of process, was necessary before the Florida court could determine title to, or could enjoin the respondent to return, the stock certificates and bonds to the petitioner. *State* v. *Jacksonville R. Co.*, 15 Fla. 201. *Lovett* v. *Lovett*, 93 Fla. 611, 112 So. 768.

The Florida statutes confer upon the Court jurisdiction to determine alimony only where the wife files a bill, or cross bill, seeking such relief. The applicable sections are as follows:

> "Chapter 65, Section 65.07. ALIMONY PENDENTE LITE. — In every suit *by a wife* for a divorce founded upon any of the grounds mentioned in Section 65.04, she may in the bill for divorce, or by petition, claim alimony and suit money, and, if the bill seems well

founded, the court shall allow a reasonable sum therefor. Or if a wife defendant in any suit for divorce shall *in her answer, or by petition*, claim alimony or suit money, and the answer or petition shall seem well founded, the court shall allow a reasonable sum therefor."

"Chapter 65. Section 65.08. ALIMONY UPON DECREE OF DIVORCE. — In every decree of divorce *in a suit by the wife*, the court shall make such orders touching the maintenance, alimony and suit money of the wife, or any allowance to be made to her, and if any, the security to be given for the same, as from the circumstances of the parties and nature of the case may be fit, equitable and just; but no alimony shall be granted to an adulterous wife. In any award of permanent alimony the court shall have jurisdiction to order periodic payments or payment in a lump sum."

"Chapter 65. Section 65.09. ALIMONY UNCONNECTED WITH DIVORCE. — If any of the causes of divorce set forth in Section 65.04 shall exist in favor of the wife, and she be living apart from her husband, she may obtain alimony without seeking a divorce *upon bill filed* and suit prosecuted as in other chancery causes; and the court shall have power to grant such temporary and permanent alimony and suit money as the circumstances of the parties may render just; but no alimony shall be granted to an adulterous wife."

It is the law in Florida that a valid final decree in a divorce suit in one state is res judicata in another state as to the right of the wife to alimony if the court has jurisdiction to grant or deny alimony and the question is in issue and is actually heard and determined or is necessarily involved, but the doctrine does not apply where the divorce is granted the husband in an ex parte proceeding wherein the court acquired no jurisdiction other than by constructive

service. *Pawley* v. *Pawley*, 46 So. 2d 464; 28 A.L.R. 2d 1358, cert. den. 10-23-50, 340 U. S. 866.

Since the respondent neither invoked the jurisdiction of the court to award alimony, nor was the denial of alimony necessarily involved, the foregoing was an attempt to exercise an in personam jurisdiction over a person not before the court, as to matters not in issue. Since Florida had no power to adjudicate respondent's rights in property which was in Ohio, the Ohio court was not required to give full faith and credit to that phase of the Florida judgment. A judgment of a court, having no jurisdiction to render it, is not entitled to the full faith and credit which the Constitution and statute of the United States demand. *Estin* v. *Estin*, 334 U. S. 541, 549.

In *Cooper* v. *Cooper*, 314 Ky. 413, 234 S. W. 2d 658, it was held that the wife, residing in Kentucky, having been sued for divorce by her husband residing in Florida, if she invoked the jurisdiction of the Florida court to grant her alimony, took the risk of being without a remedy, if the husband dismissed his complaint, since a non-resident wife may not have alimony under the Florida statutes. The Kentucky court held that her right to a property settlement and alimony survived the Florida decree of divorce; and this court denied certiorari. 344 U. S. 876.

DISTINCTIONS BETWEEN DECREES IN PERSONAM AND IN REM HAVE NOT LOST THEIR VALIDITY

While he stops short of making the claim, the petitioner seemingly argues that *Mullane* v. *Hanover Bank and Trust Co.*, 339 U. S. 306, has, in effect, repudiated all that this court said in *Estin* v. *Estin*; *May* v. *Anderson*, 345 U. S. 528, 73 S. Ct. 840, and related cases, concerning the distinction, in ex parte divorce cases, between the power of

a state to change the marital status and its power to exercise an in personam jurisdiction. We think it requires but a casual reading of the *Mullane* case to reach the conclusion that this court intended no such result.

THERE IS NOTHING IN THOMPSON v. THOMPSON THAT IS CONTROLLING IN THIS CASE

In his arguiment, the petitioner's principal contention is that a footnote reference, in the opinion in *Estin* v. *Estin* to *Thompson* v. *Thompson*, 226 U. S. 551, recognized, as law, "as late as June 7, 1948," that the state of matrimonial domicile, "had jurisdiction to settle all marital difficulties and its decrees should be recognized by all other states." Justice Pitney in the *Thompson* opinion (226 U. S. at page 562) clearly stated that the *Thompson* case was being decided upon the authority of *Atherton* v. *Atherton*, 181 U. S. 155.

The facts in the *Atherton* case are so similar to what the petitioner claims the facts are in this case, it is surprising that he does not depend upon the *Atherton* case instead of the *Thompson* case.

If, as petitioner claims, *Thompson* v. *Thompson*, "is the only sound rule," it follows that *Atherton* v. *Atherton* should be revivified, and all that this Court said in the *Williams* cases and later cases, concerning "matrimonial domicile," thereby made meaningless. In *Williams* v. *North Carolina*, 317 U. S. 287, this court said:

> "And all that would flow from the legalistic notion that where one spouse is wrongfully deserted he retains power over the matrimonial domicile so that the domicile of the other spouse follows him wherever he may go, while if he is to blame, he retains no such power. But such considerations are inapposite. As stated by Mr. Justice Holmes in his dissent in the

Haddock Case (201 U. S. P. 630, 50 L. ed 894, 26 S. Ct. 525, 5 Ann Cas 1) they constitute a 'pure fiction, and fiction always is a poor ground for changing substantial rights.' Furthermore, the fault or wrong of one spouse in leaving the other becomes under that view a jurisdictional fact on which this Court would ultimately have to pass. Whatever may be said as to the practical effect which such a rule would have in clouding divorce decrees, the question as to where the fault lies has no relevancy to the existence of state power in such circumstances. See Bingham. In the Matter of *Haddock* v. *Haddock*, 21 Cornell LQ 393, 426. 'The existence of the power of a state to alter the marital status of its domiciliaries, as distinguished from the wisdom of its exercise, is not dependent on the underlying causes of the domestic rift. As we have said, it is dependent on the relationship which domicile creates and the pervasive control which a state has over marriage and divorce within its own borders. *Atherton* v. *Atherton* which preceded *Haddock* v. *Haddock* and *Thompson* v. *Thompson*, 226 U. S. 551, 57 L. ed 347, 33 S. Ct. 129, which followed it, recognized that the power of the state of the matrimonial domicile to grant a divorce from the absent spouse did not depend on whether his departure from the state was or was not justified. As stated above, we see no reason, and none has here been advanced, for making the existence of state power depend on an inquiry as to where the fault in each domestic dispute lies. And it is difficult to pick out any such line of distinction in the generality of the words of the full faith and credit clause. Moreover, so far as state power is concerned no distinction between a matrimonial domicile and a domicile later acquired has been suggested or is apparent."

and again in *Williams* v. *State of North Carolina*, 325 U. S. 231, this court said:

> "The domicile of one spouse within a State gives power to that State, we have held, to dissolve a marriage wheresoever contracted. In view of *Williams* v. *North Carolina*, 317 U. S. 287, 87 L. ed 279, 63 S. Ct. 207, 143 A.L.R. 1273, supra, the jurisdictional requirements of domicile is freed from the confusing refinements about 'matrimonial domicile'."

In depending upon *Thompson* v. *Thompson*, the petitioner claims, "the undisputed evidence was that, since 1928, their matrimonial domicile has been at Miami, Florida." The respondent does not agree with that statement. In addition to the fact that Mrs. Armstrong separated from her husband because of his cruel treatment, it should be remembered that the parties were married in Cincinnati, and after they returned from the Isle of Pines, throughout the years they maintained a residence in Ohio, where they resided a part of each year, and a residence in Miami where they resided the remainder of each year.

If we eliminate the effect of matrimonial domicile from the opinion in *Thompson* v. *Thompson*, there is nothing in that case helpful to the petitioner. The court held, in the *Thompson* case, that under the laws of Virginia, the wife, since she was the offender, could not have alimony on a divorce decreed in favor of her husband. In this case if the respondent had invoked the jurisdiction of the Florida court to determine alimony, the chancellor would have been called upon to exercise a reasonable discretion in granting alimony, since no claim was made she had been guilty of adultery. *Cowan* v. *Cowan*, 147 Fla. 473, 2 So. 2d 869.

In the *Thompson* and *Atherton* cases the appellants did not raise the question whether the judgments deprived

them of due process of law, and that question was not considered by the Court in the opinions. Mr. Justice Pitney, who delivered the *Thompson* opinion, four years later, delivered the opinion in *Baker* v. *Baker, Eccles & Co.*, 242 U. S. 394, where the question of due process of law was raised, wherein the Court said:

> "It is now to well settled to be open to further dispute that the 'full faith and credit' clause, and the act of Congress passed pursuant to it, do not entitle a judgment in personam to extraterritorial effect if it be made to appear that it was rendered without jurisdiction over the person sought to be bound."

and in that case, the Court answered the argument here made as to "the chaotic conditions that will result," when it said:

> "And to assume that a party resident beyond the confines of a State is required to come within its borders and submit his personal controversy to its tribunals upon receiving notice of the suit at the place of his residence is a futile attempt to extend the authority and control of a State beyond its own territory."

The respondent, therefore, contends that, if the *Thompson* case were the only thing to be considered, certiorari should be denied. Be that as it may, there are other reasons for denying this petition.

IN OHIO, AND IN FLORIDA, ALIMONY COMPREHENDS MORE THAN A DUTY TO SUPPORT

In *Klump* v. *Klump*, 96 O. App. 93, 101, the Court said:

> "It was held in *Fisher* v. *Fisher*, 78 O. App. 125, 64 N. E. (2d), 328, that "an equitable distribution of money and property acquired by the parties during their married life," where a divorce is granted the wife,

is not an award of alimony even though it is so designated. In the opinion of the court, at page 127, Judge Miller put his finger on the statutory duty imposed on the trial court, in clear and discriminating language, as follows:

"The court could well have made the property division which is carried in the entry if the decree had been granted to the husband for the wife's aggression, because such division was nothing more or less than an equitable division of the property. Alimony begins when the court requires the payment to be made to a party from the aggressor's property, money or earnings."

That this is also the law in Florida is recognized in *Engebretsen* v. *Engebretsen*, 11 So. 2d 322, where the Court said:

"When a wife contributes her industry and labor or when she advances money to a business operated by her husband during coverture she cannot be deprived of her property, because the law will not permit or allow a forfeiture thereof to the husband when marital difficulties appear on the horizon, but the fruits of her labor and industry, or the money advanced, are special equities for adjudication."

The right which Mrs. Armstrong claimed to an equitable division of the property accumulated, as the result of her investment of capital and her labor, before and after the marriage, was not merely incident to the marital status. It was a right, in personam, which the ex parte Florida decree could not and did not destroy.

IN OHIO, AND IN FLORDIA, THE RIGHT TO ALIMONY SURVIVES AN EX PARTE DIVORCE

Long before this Court decided the first *Williams* v. *North Carolina* case, Ohio Courts had determined the public policy of Ohio to be that where one state had jurisdiction

over one of the parties and undertook to dissolve the marriage. Ohio would recognize the power of such other state to so dissolve it, but while a decree of divorce so rendered would be recognized, the state rendering it would not be permitted to project its jurisdiction into Ohio by constructive service, and thereby, affect property rights arising in Ohio by operation of Ohio law. *Cox* v. *Cox*, 19 O. S. 502; *Woods* v. *Waddle*, 14 O. S. 449; *McGill* v. *Deming*, 44 O. S. 645; *Doerr* v. *Forsythe*, 50 O. S. 726; *Bay* v. *Bay*, 85 O. S. 426; *Snyder* v. *Buckeye B & L Ass'n*, 26 O. App. 175; *Slapp* v. *Slapp*, 143 O. S. 105.

There is no distinction, in Ohio, as to the effect of a decree rendered in a foreign forum from that rendered in a domestic forum when the party was served by publication only, and entered no appearance. *Cox* v. *Cox*, supra; *Stephenson* v. *Stephenson*, 54 O. App. 239; *Wick* v. *Wick*, 58 O. App. 72.

The law of Florida, as decided in *Pawley* v. *Pawley*, supra, is that a divorce decree granted a husband in a foreign jurisdiction, (which was the matrimonial domicile), although valid as a dissolution of the marital status, does not foreclose the wife's right to an adjudication in Florida concerning the propriety of alimony, where the foreign court did not secure jurisdiction over the wife by personal service, or by appearance. It is interesting to note that Mr. W. G. Ward, who was petitioner's attorney in this Florida divorce case, was of counsel for Mrs. Pawley and that he, perhaps, had the *Pawley* case in mind, when this decree was drawn, so as to provide, "This Court recognizes that the Courts of Ohio will have the ultimate determination of the case of property rights where the property itself is in the state of Ohio."

CONCLUSION

In this case, as in *Estin* v. *Estin*, each of the States involved should be restricted to the matters of their dominant concern; and that result has been accomplished by making the Florida decree effective, insofar as it affects the marital status, and ineffective on the issue of alimony. Since Ohio does not discriminate against enforceable ex parte divorce decrees granted by a Sister State, no problem under the Full Faith and Credit Clause arises.

No federal question of substance is presented and a writ of certiorari should be denied.

Respectfully submitted,

WALTER K. SIBBALD,
Attorney for Respondent,
Mary R. Armstrong.

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In The

Supreme Court of the United States

October Term, 1955

No. 38

RAYMOND C. ARMSTRONG,
Petitioner,

v.

MARY R. ARMSTRONG,
GENERAL MOTORS CORPORATION, et al.,
Respondents.

BRIEF FOR MARY R. ARMSTRONG, RESPONDENT

HEADLEY, SIBBALD & TAFT
WALTER K. SIBBALD
906 First Natl. Bank Bldg.,
Cincinnati 2, Ohio
Attorneys for Respondent,
Mary R. Armstrong

COURT INDEX PRESS INC. — Law Printers — 809 Walnut St., Cincinnati, O.

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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1955

No. 38

RAYMOND C. ARMSTRONG,

Petitioner,

v.

MARY R. ARMSTRONG,
GENERAL MOTORS CORPORATION, et al.,

Respondents.

BRIEF FOR RESPONDENT MARY R. ARMSTRONG

Since General Motors Corporation does not plan to file a brief, Mary R. Armstrong will be referred to as the respondent.

STATUTES INVOLVED

The first section of Article IV of the Constitution of the United States provides, "And the Congress may by general Laws prescribe the Manner in which said Acts, Records and Proceedings shall be proved, and the Effect thereof."

By the Act of May 26, 1790, c. 11; 28 U.S.C.A. Section 1738, Congress has provided that:

"Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

FLORIDA

The Florida statutes provide:

"Chapter 65. Section 65.07. ALIMONY PENDENTE LITE. — In every suit *by a wife* for a divorce founded upon any of the grounds mentioned in Section 65.04, she may in the bill for divorce, or by petition, claim alimony and suit money, and if the bill seems well founded, the court shall allow a reasonable sum therefor. Or if a wife defendant in any suit for any divorce shall in *her answer, or by petition*, claim alimony or suit money, and the answer or petition shall seem well founded, the court shall allow a reasonable sum therefor."

"Chapter 65. Section 65.08. ALIMONY UPON DECREE OF DIVORCE. — In every decree of divorce *in a suit by the wife*, the court shall make such orders touching the maintenance, alimony and suit money of the wife, or any allowance to be made to her, and if any, the security to be given for the same, as from the circumstances of the parties and nature of the case may be fit, equitable and just; but no alimony shall be granted to an adulterous wife. In any award of permanent alimony the court shall have jurisdiction to order periodic payments or payment in a lump sum."

"Chapter 62. Section 62.07. FEES OF MASTERS IN CHANCERY. — The fees of the master shall be as follows:

* * *

"Attendance on unlitigated case, per day $1.00

* * *

"Attendance to settle unlitigated report, per day $1.00

* * *

"Deposition of witness, taking, per 100 words $.25

"For all other services, the same fees as are prescribed for clerks of the Circuit Court. When no such fees are prescribed, then he shall receive such compensation as the judge may fix. All fees shall be taxed as part of the costs of the cause."

OHIO

Section 3105.19: Parties defendant. (G. C. Section 8003-20)

"A person or corporation having possession of, control of, or claiming an interest in property, real or personal, out of which another seeks alimony, may be made a party defendant."

QUESTION PRESENTED

The Ohio courts having held that the respondents right to an adjudication of property rights and alimony could and did survive the Florida divorce decree, the primary question involved is whether that that conclusion conflicts with the Full Faith and Credit Clause of the Constitution.

STATEMENT OF CASE

Raymond C. Armstrong and Mary R. Armstrong (nee Donovan) are natives of Hamilton County, Ohio. About 1914 they began in a small way a business in which they applied rubber tires on vehicles. Mary Donovan furnished part of the initial capital for that business through the sale of a diamond ring which belonged to her and a loan which she obtained from a relative. (R. 24, 78, 152)

She worked with Armstrong in establishing that business, without compensation, (R. 25) until they were married in the year 1917; and, thereafter, until the business was sold about the year 1923, Mrs. Armstrong actively worked in the business. The respondent testified:

"Q. In fact Mrs. Armstrong, the business on Stabler Street was in Mr. Armstrong's name, and the business on Clark Street was in Mr. Armstrong's name; is that right? A. We were partners, and going to be married.

Q. I am just asking. The business on Clark Street was in his name too, wasn't it? A. Yes, sir; everything was in his name as far as I was concerned. I didn't care.

Q. And you married him in 1917? A. On June 18, 1917, yes sir.

Q. And you told the court that between 1914 and 1917 the business belonged to both of you? A. Yes, sir. We worked together every day.

Q. And he took you in as a partner in 1914? A. I put the money in that started us in business, and we were partners.

Q. There was nothing in writing about that? A. With the man I was going to marry I didn't think I needed it."

"Q. And three years before you were married you stated that this business was a partnership? A. It was a partnership from Stabler Street on through Clark Street and all through our life together.

Q. What hours did you put in when you worked on Stabler Street? A. From about nine to six, and sometimes later if wheels had to be delivered for the undertakers, which happened quite often. Sometimes they had to be delivered over the river and we worked later."

"Q. And then you stated that as far as the business was concerned on Clark Street it was in Mr. Armstrong's name, but that you considered yourself a partner? A. No, sir. We both considered me a partner, Mr. Armstrong as well as myself. I helped him, and he consulted me on everything that we done. Everything that we bought he consulted me on, and we talked it over. (R. 52, 53)

The business was successful and out of its earnings they invested in 600 shares of General Motors stock. (R. 116) After the business was sold they went to Florida, and shortly thereafter to the Isle of Pines where they purchased land and en-

gaged in growing fruits and vegetables until a hurricane drove them out. Subsequently, they acquired real estate in Hamilton and Clermont Counties, in Ohio, and in Miami, Florida, and until they finally separated in October, 1950, for the most part they spent their winters in a residence in Miami and their summers, sometimes as late as Thanksgiving, in a residence they maintained in Clermont County, Ohio. (R. 32, 33, 147) Their real estate holdings in Ohio and in Florida were jointly held, as were their bank accounts, which were in Ohio banks, except for a small account in Miami. The property, real and personal, in Florida, when the divorce action was filed was worth about $20,000.00. (R. 172, 173) Notwithstanding difficulties which they encountered in the stock market crash of 1929, they were able to hold their General Motors stock; which through stock dividends, had increased to a holding of 2250 shares when this litigation began. (R. 119, 120, 126) The General Motors stock was registered in the corporation's records in the name of Ray Armstrong, c/o The Cincinnati Bank & Trust Co. (Exhibit C., R. 294) and the dividends were sent to that address and by that bank credited to the Armstrong account, (R. 162), which in 1945 was changed to a joint account of the parties (R. 58). The respondent testified:

> "Q. You stated that these stocks, General Motors and other stocks were going to be transferred to both names, but were not because of the expense of transferring the stocks? A. Well, my husband wrote to the General Motors in I think 1941, and they wrote back and told him about what it would cost, and he mentioned it to me and I said don't bother, leave it as it is.
>
> Q. As a matter of fact, the cost of transfer would only be about thirty-five to fifty dollars, would it not? A. Makes no difference. I didn't want him to bother." (R. 62, 63)

In the summer of 1948 while they were living on their farm near Goshen in Clermont County, Mr. Armstrong hit his wife

with the butt end of a revolver and knocked out some of her teeth, (R. 35, 49, 87), as a result of which they separated.

Mr. Armstrong had told his wife: "I am going to keep the stocks and everything else that we have. I kept you for thirty-four years." (R. 59); and Mrs. Armstrong for the purpose of protecting herself, in obtaining a proper property settlement, at that time took into her own possession, from safety deposit boxes held in their joint names, the General Motors stock certificates and the other stocks involved in this litigation, together with a large part of the bank accounts theretofore held in their joint accounts. Mr. Armstrong was notified at once that it was her purpose to hold what she had taken into her possession until a division of their holdings could be agreed upon. Negotiations for such a settlement extended over a period of several weeks and before a settlement was reached they decided to go back together and from that time until October of 1950 they lived together in Miami, Florida and in Hamilton and Clermont Counties, in Ohio.

As a part of their reconciliation Mrs. Armstrong returned to their joint accounts a part of the money she had withdrawn from the banks and also paid the attorneys' fees which each had incurred while they were separated; and Mr. Armstrong gave to his wife the following signed statement: (Ex. 1 R. 189)

> "Ashville, N. C.; Sept. 27, 1948
>
> I, Raymond C. Armstrong, solemnly before God swear that I love my wife, Mary R. Armstrong, and am assuring her of this because of a terrible misunderstanding. I shall never, never again bring us to the brink of divorce because I know my wife is and has always been working for my best interest and is all a good and faithful wife should be. I shall never bring up unpleasant subjects which have caused her so much worry in the past. Just as soon as possible after I arrive in Cincinnati I shall discontinue all legal actions which are pending and drop all charges I have placed against her. I shall do my utmost to make my wife happy in the future. I have not done so in the

past. The Stocks and moneys and war bonds which are now in the process of litigation she, Mary R. Armstrong, is to keep until such time as she decides to put them as they were before July 1, 1948. The jewelry she possesses is her's alone. I make the above statements of my own free will.

RAYMOND C. ARMSTRONG
Ashville, North Carolina
Sept. 27, 1948"

The behavior of the petitioner that led to the final separation in October, 1950, is described in respondent's testimony (R. 43-46)

"Q. During that time what was Mr. Armstrong's behavior to you? A. He treated me very badly, physically and mentally.

Q. What did he do that you refer to as mental? A. Well, he told me he intended to put me in a mental institution where he could keep me.

Q. What else? A. Also, that I was never to get anything he had; that he had a will made and would see I never got a penny of anything.

Q. What did he do that you refer to as physical? A. He beat me, and every time he passed me at the table he would punch me in the head every time he would pass me at the table.

Q. I will ask you if aside from punching you be made other threats against you? A. Yes, he made threats against me all the time. He was always telling me he was going to kill me, and came into the bedroom, and I would wake with him sitting there and screaming that he would see if his attorney would have me arrested, or get papers to put me away so he wouldn't be bothered with me any more.

Q. During that interval of time, did he at any time have a gun in his possession? A. My husband always had quite a few guns; always slept with one under his pillow.

Q. Did he make any threats against you relating to the use of a gun? A. Several times he put it to my head and was going to blow my brains out. He said that was the best solution to his problem."

Q. What if anything did he do to you? A. He punched me and beat me so badly I couldn't stay with him any longer. I thought he would eventually kill me.

Q. Did you make any statement as to your intention? A. I told him I couldn't take any more, and I couldn't live with him any longer.

Q. What occurred the next day? Where did you go? A. The next day some friends of ours across the water invited us out on a boat ride; so we went, and after we came home Mr. Armstrong resumed the quarreling with me that he had been doing, and came through the room and had a paid of slippers on that had a heavy heel, and he seemed to go mad, and he took the slipper off and beat me across the head and face and fingers and back, and kicked me in the shoulder and it was sore for months after. I lost the nails off my finger and—

Q. That was on Saturday? A. Yes sir.

Q. How soon after he did that was it that you left the house? A. I had to leave that night. I left that night."

* * *

"Q. How were they damaged? A. Well, he had beat me on my hand when I put it up to protect my face, and this slipper, the heel of this slipper damaged my two fingers and they turned dark, the nails, and I lost them, and I tried to turn away and he kept beating me with the heel of the shoe, and kicking me in the shin and in the shoulder and said he was going to finish me.

Q. I will ask you if when you came to Cincinnati, you showed those marks to your sisters? A. Why yes. Anyone could see my face and my head. My sister I think saw my back when I went in the bathroom. I am sure she did.

Q. Now, Mrs. Armstrong, how soon after that did you rent an apartment here in Cincinnati? A. I still hoped for a reconciliation, and stayed with my sister until the tenth of November, to see if he would contact me. I didn't want to leave my husband. I don't like that.

Q. Then what did you do about the tenth of November? A. Rented an apartment at 815 Hermosa.

Q. You lived there at all times did you? A. Yes, sir, I still live there.

Q. You may state whether or not you intend to continue living in Cincinnati? A. I intend to make Cincinnati my permanent home.

Respondent, during November, 1950, notified General Motors Corporation that she held the stock certificates in her possession, in Ohio, and claimed an interest therein. (Exhibits C and D. R. 294, 295). When General Motors Corporation notified petitioner it would withhold payment of dividends pending adjustment of the claimed interest, petitioner's Florida counsel questioned the respondents right to establish a separate domicile in Ohio (Exhibit F. R. 297). After Mr. Ward was informed this was due to petitioners ill treatment (Exhibit G. R. 299) the negotiations for a property settlement were resumed, and when an agreement could not be reached, the appellant filed his complaint in the Florida court in which he sought a divorce.

Petitioner, in his bill, also,

(a) sought to put in issue respondent's right to a separate domicile in Ohio;

(b) to have the court grant a temporary injunction restraining respondent from disposing "of any of the stocks * * * now in her possession"; and

(c) "that in the final decree the defendant shall be directed and ordered to return to the plaintiff all of the stocks and bonds and cash found to be due by the defendant to the plaintiff on an accounting to be taken by the court"; and

(d) "Plaintiff would show unto the court that the interest of the defendant in the property jointly held in the estate by the entirety, half of which will inure to the benefit of the defendant upon a divorce being granted, is ample to support the defendant and that she has no further need of alimony or property settlement. Nevertheless the plaintiff hereby offers to do equity and to abide by such orders or decrees, with reference to the settlement of the property affairs, as to this court may be

deemed equitable; that pending the final decree of divorce in this cause this court will enter a temporary restraining order restraining the defendant from instituting any action concerning the matrimonial status between the plaintiff and defendant and that among other things in the event the defendant fails to obey the injunctive order of this court that this court will order and decree that any interest which the defendant may hold in property in the state of Florida over which this court has jurisdiction, including her interest in the home place, shall be subjected by the court in settlement of the damage caused by the defendant to the end that the court decree there has been a conveyance covering her interest in the home place and personal property, furniture and fixtures contained therein. Plaintiff prays for such other and further relief as to the court may be deemed equitable and proper."

No temporary injunction was granted; the General Motors Corporation was not made a party; and Mrs. Armstrong, on whom there was only constructive service, did not enter her appearance.

Mr. Armstrong did not tell his attorneys anything about the agreement he had signed in Asheville, but on the contrary falsely and fraudulently signed and swore to his complaint that the respondent as a part of their 1948 reconciliation had promised to return the securities and the bank accounts to him and had not done so. The fraud thus practiced upon the Florida court was such that on October 2, 1951, the Florida court entered a decree granting Armstrong a divorce, and in its decree concluded that Mrs. Armstrong's retention of the securities and bank accounts was without his consent, and was illegal to the extent that she was guilty of conversion or embezzlement of her husband's property.

The cause was referred to a special master in chancery who held his hearing at the office of petitioner's attorney (R. 215, 216); and in his deposition offered in this case the petitioner's attorney testified:

Q. After the testimony was completed, both on the first and second order of reference, did you discuss with Mr. Prunty, the master's report? A. Oh, definitely. Yes, sure."

Q. Aside from what you discussed relating to that, did you take any other part in the preparation of the master's report? A. *I do not recall, Mr. Sibbald, whether I did or did not.*

Q. Let me ask you this question: Did you prepare a draft of that report? A. No, sir.

Q. Now, I call your attention to the last paragraph of Mr. Prunty's report wherein he uses these words, "*A special master's fee in this cause has been settled by an agreement between counsel for plaintiff and your master.*" *When* did you have that agreement with Mr. Prunty? A. That is customary here, on these ex parte cases, rather than being no contest on it, they are not bound on divorce cases on a standard rate of pay. That was a customary fee. I do not remember what it was.

Q. My question was: *When* did you have an agreement with Mr. Prunty? A. *I imagine it was about the time he was ready to file the report.* Either that matter is arranged between counsel and agreed to, or set by the court.

Q. You say you do not recall what the amount was? A. I think it was either $200 or $250. That is a customary fee in such cases. I do not recall the exact amount. It was not paid then. It was paid some time afterwards." (R. 291, 292).

The fee customarily allowed by the courts to masters in uncontested divorce actions in Dade County, Florida, amounts to Twenty-five ($25.00) dollars. (Stipulation, R. 311)

In his report the special master found:

"The record in this cause shows that litigation is now pending in the state of Ohio where the plaintiff is seeking to recover from the defendant the possession of the

stocks and bonds, which were wrongfully taken by the defendant from the possession of the plaintiff."

* * *

"*The question of the wife's alimony, if any, cannot be determined at this stage of the proceeding.* At the present time the wife of the plaintiff has in her possession large sums of money belonging to the plaintiff and approximately $100,000.00 in stocks and bonds. In addition thereto, she has a half interest in properties in the state of Ohio and other funds and properties not fully accounted for. I assume that this will be the subject matter of the litigation in Ohio, *and that proper disposition will be made by the courts of that state.*"

* * *

"The defendant is not entitled to receive alimony from the plaintiff under the facts and circumstances presented in this case."

* * *

"2. That no award of alimony be made to the defendant." (R. 243-245)

The Florida decree, which was entered the next day after the master's report was filed, contains the following:

"This court takes recognition of the fact that litigation is now pending in the state of Ohio relative to the recovery of these stocks and bonds as well as the settlement of other matters concerning property rights between the parties. This court *recognizes that the courts of Ohio will have the ultimate determination of the question of property rights where the property itself is in the state of Ohio.* * * *

* * *

"This court, therefore, finds the defendant has not come into this court in good faith or made any claim to the equitable conscience of the court and has made no showing of any need on her part for alimony. It is, therefore, specifically decreed that no award of alimony be made to the defendant * * *". (Decree R. 248, 249).

After the expiration of the required one year from the time she established her separate domicile in Cincinnati, Mrs. Armstrong, on February 1, 1952, commenced this action for divorce, in which she charged the petitioner with gross neglect of duty, extreme cruelty, and with falsely and fraudulently obtaining the Florida divorce. In her amended petition the respondent pleaded the facts entitling her to an equitable division of the corporate stocks which the parties had accumulated; and in her prayer sought such equitable division; and, also, alimony out of the petitioner's share.

The General Motors Corporation, a Delaware corporation, was made a party defendant and service of summons was made upon it through its statutory agent, designated pursuant to Ohio foreign corporation laws. General Motors Corporation after it was summoned withheld payment of dividends, has been represented by counsel and has not contested jurisdiction of the court to make orders binding upon it.

After service upon the petitioner by publication was started and before the publication was approved the petitioner entered his appearance. Thereafter petitioner moved for an order requiring General Motors Corporation to release to him dividends withheld and to pay to him dividends thereafter accruing, which motion the court overruled. General Motors Corporation did not join in that motion.

On January 2, 1953, the petitioner filed his answer in which he pleaded the Florida decree as res judicata "and that by reason thereof, plaintiff cannot maintain this action against said defendant *for divorce*" (Answer R. 8). In his answer no reference was made to the Florida decree as a denial of alimony or as a determination of property rights; and petitioner, depending upon allegations – other than res judicata – prayed:

> "that the court order plaintiff to deliver up to defendant the certificates of stock aforesaid and the jewelry aforesaid, which she has converted to her own use; that

the court make an equitable division between the parties hereto of the monies withdrawn by plaintiff from the joint bank accounts of the parties hereto, as aforesaid, and for all further relief, both legal and equitable, to which this defendant may be entitled in the premises." (R. 11)

The respondent's action for a divorce and a property settlement and the petitioner's action for the delivery of the stocks, which he filed against respondent in the Ohio court while the Florida action was pleading, though not consolidated, were tried together, upon the stipulation of counsel that the evidence in the divorce case would practically determine both cases. (R. 22).

The Trial Court found that but for the divorce decree entered in Florida, the respondent was entitled to a divorce; and, as alimony, allowed her certain cash, bonds and jewelry; and ordered the respondent to cause to be transferred to her 1250 shares of the General Motors stock.

ARGUMENT

I

The Court Did Not Err in Granting Alimony

The petitioner, in his ARGUMENT I, concedes, that *if Florida was not the matrimonial domicile, no question of* full faith and credit is involved, and the question of whether the respondent could have alimony, support or separate maintenance, after the ex parte Florida divorce, is controlled by Ohio law and public policy.

In making that concession, petitioner refers to *Cox* v. *Cox*, 19 O.S. 502, and *Slapp* v. *Slapp*, 143 O.S. 105, as cases determining that Ohio under its local law holds that a wife may sue for alimony or separate maintenance after an ex parte divorce; and to *Stewart* v. *Stewart*, 155 Fla. 158, 153 So. 114, and *Paw-*

ley v. *Pawley*, 46 So. 2nd, 464, as cases determining that Florida under its local law holds that an action for alimony or separate maintenance does not survive an ex parte divorce.

This correctly states the Ohio rule but not that of Florida. The only thing decided in the *Stewart* case was that where a wife sued for divorce and the husband answered pleading a Nevada decree, temporary maintenance and expenses would not be allowed pending determination and adjudication of the validity of the Nevada decree. In the *Pawley* case the court held it is the law in Florida that a valid final decree in a divorce suit in one state is res judicata in another state as to the right of the wife to alimony if the court has jurisdiction to grant or deny alimony and the question is in issue and is actually heard and determined or is necessarily involved, but the doctrine does not apply where the divorce is granted the husband in an ex parte proceeding wherein the court acquired no jurisdiction other than by constructive service. *Pawley* v. *Pawley*, 46 So. 2d. 464, 28 A.L.R. 2d 1358, cert. den. 10-23-50, 340 U.S. 866.

Petitioner also cites *Gullet* v. *Gullet*, 149 Fed. 2nd. 17 (C.A. D.C.) as authority for his statement that in other jurisdictions the wife's action for alimony does not survive an ex parte divorce, and in so doing, perhaps, overlooked *Hopson* v. *Hopson*, 221 Fed. 2nd. 839, wherein that court *in banc*, with six of the eight judges present concurring said:

> "In the present case also, we think the full faith and credit clause does not operate as a bar to maintenance. We recognized in *Meredith* that the divisibility doctrine rested on the foreign court's lack of *in personam* jurisdiction over the non-appearing spouse and not upon the reduction of her maintenance right to judgment prior to the divorce. We said, 'While the *Estin* decision involved merely the enforcement of a maintenance order entered prior to the foreign divorce, its reasoning would seem to be equally applicable to an original grant of maintenance

after the divorce. Either may be done consistently with the full faith and credit clause." We find no basis in that reasoning for drawing a distinction, so far as full faith and credit are concerned, between an original grant of maintenance after the divorce in a suit filed prior to the divorce; as in *Meredith*, and such a grant in a suit filed after the divorce, as in the present case. Moreover, it seems to us that it would unduly exalt form over substance to draw any rigid distinction since the claim sued upon in *Meredith* and the one reduced to judgment in *Estin* flow from the same substantive rights as the one neither sued upon nor reduced to judgment in the present case. We therefore hold that a grant of maintenance in a suit filed after an *ex parte* foreign divorce is also consistent with the full faith and credit clause."

Long before this Court decided the first *Williams* v. *North Carolina* case, Ohio Courts had determined the public policy of Ohio to be that where the state where one of the parties was domiciled undertook to dissolve the marriage, Ohio would recognize the power of such other state to so dissolve it, but while a decree of divorce so rendered would be recognized, the state rendering it would not be permitted to project its jurisdiction into Ohio by constructive service, and thereby, affect property rights existing in Ohio by operation of Ohio law. *Cox* v. *Cox*, 19 O.S. 502; *Woods* v. *Waddle*, 44 O.S. 449; *McGill* v. *Deming*, 44 O.S. 645; *Doerr* v. *Forsythe*, 50 O.S. 726; *Bay* v. *Bay*, 85 O.S. 426; *Slapp* v. *Slapp*, 143 O.S. 105.

There is no distinction, in Ohio, as to the effect of a decree rendered in a foreign forum from that rendered in a domestic forum where the wife was served by publication only, and entered no appearance. *Cox* v. *Cox*, supra; *Stephenson* v. *Stephenson*, 54 O. App. 239; *Wick* v. *Wick*, 58 O. App. 72.

Petitioner, however, claims that Florida was the matrimonial domicile and as such had jurisdiction to settle all marital matters; that the Florida decree is res judicata as to respondents right to a division of property and alimony; and that Ohio

courts are therefore precluded from granting relief in accordance with local law.

II

The Fiction of Matrimonial Domicile is Not in This Case

In the trial of this case the pleadings and the evidence required the court to decide whether the Florida decree was res judicata as to the respondent's prayer for a divorce. As to alimony, however, neither the answer, nor petitioner's theory of the case, to which he adhered strictly throughout the trial, required the court to decide whether the Florida decree was res judicata as to the respondent's claims for a division of property and alimony. In his brief, filed with the Trial Judge before judgment was entered, the petitioner clearly states his theory of the case, as follows:

> "If plaintiff's action is barred by the Florida decree, as we contend, then this Court can only award alimony, unless the evidence would have justified, but for the Florida decree, the granting of the divorce to plaintiff, in which case the Court would be authorized to make a division of property, as was done in the *Slapp* case."

The familiar rule that res judicata is a defense and if not pleaded is waived, is settled law in Ohio. *State, ex rel.* v. *Morrow*, 131 O.S. 266. The petitioners answer contained no plea of res judicata as to alimony, in that there was no plea that the Florida court had denied alimony. The petitioner having waived the defense of res judicata and having elected to make his defense upon the theory that the Trial Court could allow alimony, he was in no position after judgment was entered to claim there had been a denial of full faith and credit.

This is so since the Ohio appellate courts have followed the principle that where a case has been tried upon a theory adopted by a party, to which he has adhered strictly through-

out the trial, they will not at his behest upon appeal on law questions consider the appeal on any other theory. *Hiller v. Shaw*, 45 O. App., 303, *Vestich v. Sander*, 86 O. App. 234.

Nevertheless, after the judgment was entered the petitioner retained Robert N. Gorman as his counsel to prosecute an appeal and the fiction of matrimonial domicile came into the case. In his appeal petitioner now argues that Mr. Justice Douglas in writing the opinion in *Estin v. Estin*, 334 U.S. 541, approved *Thompson v. Thompson*, 226 U.S. 551, by his reference to it in footnote 4; that by reason of such approval the doctrine of matrimonial domicile has not been entirely discarded by this Court; that Florida was the state of matrimonial domicile; and that *Thompson v. Thompson* required the Ohio courts give full faith and credit to that part of the Florida decree which he claims denied alimony, notwithstanding there was an absence of personal service and no entry of appearance.

Since the foregoing claims were not preserved in the Trial Court as the basis for claimed error we submit the Supreme Court of Ohio did not err in rejecting petitioners second Assignment of Error. (R. 309).

III

Florida Was Not The Matrimonial Domicile

In *Williams v. North Carolina*, 317 U.S. 287, this court, referring to "matrimonial domicile", said:

> "And all that would flow from the legalistic notion that where one spouse is wrongfully deserted he retains power over the matrimonial domicile so that the domicile of the other spouse follows him wherever he may go, while if he is to blame, he retains no such power. But such considerations are inapposite. As stated by Mr. Justice Holmes in his dissent in the *Haddock* case, (201 U.S.P. 630, 50 L. ed 894, 26 S. Ct. 525, 5 Ann Cas 1) they con-

stitute a pure fiction, and fiction always is a poor ground for changing substantial rights. Furthermore, the fault or wrong of one spouse in leaving the other becomes under that view a jurisdictional fact on which this Court would ultimately have to pass. . . .

"*Atherton* v. *Atherton* which preceded *Haddock* v. *Haddock* and *Thompson* v. *Thompson*, 226 U.S. 551, 57 L. ed 347, 33 S. Ct. 129, which followed it, recognized that the power of the state of the matrimonial domicile to grant a divorce from the absent spouse did not depend on whether his departure from the state was or was not justified. As stated above, we see no reason, and none has here been advanced, for making the existence of state power depend on an inquiry as to where the fault in each domestic dispute lies. And it is difficult to pick out any such line of distinction in the generality of the words of the full faith and credit clause. Moreover, so far as state power is concerned no distinction between a matrimonial domicile and a domicile later acquired has been suggested or is apparent."

and again in *Williams* v. *State of North Carolina*, 325 U.S. 231, this court said:

"The domicile of one spouse within a State gives power to that State, we have held, to dissolve a marriage wheresoever contracted. In view of *Williams* v. *North Carolina*, 317 U.S. 287, 87 L.ed 279, 63 S. Ct. 207, 143 A.L.R. 1273, supra, the jurisdictional requirements of domicile is freed from the confusing refinement about 'matrimonial domicile.'"

We recognize this Court "cannot, by making 'jurisdiction' depend upon a determination of who is the deserter and who the deserted, or upon the shifting notions of policy concealed by the cloudy abstraction of 'matrimonial domicile,' turn this into a divorce and probate court of the United States." 317 U. S. 303.

We, therefore, suggest that the trial court, having heard the testimony of both parties and their witnesses; having examined the dentist's record (Ex. 7, R. 87) and the petitioners promise to mend his ways (Ex. 1, R. 87); and having heard the detailed description of his cruel treatment that caused the final separation, upon consideration of respondents amended petition, which charged gross neglect of duty and extreme cruelty, entered judgment finding "from all the evidence in this case that plaintiff, Mary R. Armstrong, were it not for said Florida decree, would be entitled to a judgment granting to her a divorce" (R. 17).

The law of Virginia as it was when *Thompson* v. *Thompson* was decided formed the basis for the fiction that the unity of the persons of the spouses carried with it the unity of the domicile; and that caused the Virginia court, as ground for its *in personam* jurisdiction over her, to assume Mrs. Thompson was legally present at the husbands Virginia domicile though in fact she was absent and living in the District of Columbia. The fiction precluded her from showing she had established her separate domicile because her husband had been guilty of cruel treatment of such character as to compel her to leave him.

The fiction no longer exists in Virginia and if the Thompson case was before a Virginia court under now existing laws, no such conclusion would be reached. *Com.* v. *Rutherfoord*, 160 Va. 524, 169 S.E. 909, 90 A.L.R. 348.

The fiction does not exist in Florida and the courts of that state hold that the husband is the head of the family and a residence established by him is the residence of the wife unless through his fault she is compelled to leave the family domicile and establish a domicile of her own. *Frank* v. *Frank*, 75 So. 2nd. 282.

Since the monolithic conception that husband and wife are one and the same person has long since ceased to be valid no reason exists for precluding the wife from proving she was justified in leaving her husband. The finding of the Trial

Court that petitioners gross neglect of duty and extreme cruelty were such as to entitle the respondent to a divorce is also sufficient to preclude him from claiming that Florida was the matrimonial domicile.

IV.

In Ohio, and in Florida, Alimony Comprehends More Than a Duty to Support

In *Estin* v. *Estin*, and in the other full faith and credit divorce cases that have been before this court, the subject matter involved claims to separate maintenance. The right of a wife to have her husband support her is a right incident to the marriage. This case involves more than an incident to the marriage. Here the respondent through her own testimony and that of her witnesses proved that prior to the marriage she contributed her funds and property and her labor to the establishment of a business which prior to and after the marriage provided profits which were invested in 600 shares of General Motors stock and other property. Since no finding of facts was requested we have a right to assume that the Trial Courts judgment is supported by that testimony. That being true the respondent was justified in claiming an equitable share in the ownership of that property; and her claim did not arise as an incident of the marriage.

In *Klump* v. *Klump*, 96 O. App. 93; 101, the Court said:

> "It was held in *Fisher* v. *Fisher*, 78 O. App. 125, 64 N. E. (2d), 328, that "an equitable distribution of money and property acquired by the parties during their married life", where a divorce is granted the wife, is not an award of alimony even though it is so designated. In the opinion of the court, at page 127, Judge Miller put his finger on the statutory duty imposed on the trial court, in clear and discriminating language, as follows:

"The court could well have made the property division which is carried in the entry if the decree had been granted to the husband for the wife's agression, because such division was nothing more or less than an equitable division of the property. Alimony begins when the court requires the payment to be made to a party from the aggressor's property, money or earnings."

That this is also the law in Florida is recognized in *Engebretsen* v. *Engebretsen*, 11 So. 2d 322, where the Court said:

"When a wife contributes her industry and labor or when she advances money to a business operated by her husband during coverture she cannot be deprived of her property, because the law will not permit or allow a forfeiture thereof to the husband when marital difficulties appear on the horizon, but the fruits of her labor and industry, or the money advanced, are special equities for adjudication."

In *Heath* v. *Heath*, 138 So. 796, 82 A. L. R. 537, the Supreme Court of Florida said:

"There is undoubted proof that the wife materially assisted the husband in the conduct of his business of operating a chain of stores and that she put into her husband's business a substantial amount of her own capital in addition to what personal services she rendered. Whatever consequences the wife may be compelled under the law to suffer for her marital derelictions by the severance of the bonds of matrimony, she is not required to incur the forfeiture of any of her already vested equitable property rights which were acquired by her while the matrimonial barque was sailing on smoother seas. See *Carlton* v. *Carlton*, 78 Fla. 252, 83 So. 87; *Taylor* v. *Taylor*, 100 Fla. 1009, 130 So. 713.

"The provisions of section 4987, Comp. Gen. Laws, section 3195, Rev. Gen. St., to the effect that no alimony shall be granted to an adulterous wife, do not preclude the ascertainment and allowance by the court of an amount to the wife for her special equity in property

and business of the husband toward which she is shown to have contributed materially in funds and industry through a period of years while the marriage remained undissolved.

"Such an allowance is not alimony and should never be made in any case unless shown to be warranted by special facts and circumstances which support a finding of an equity in the husband's property arising in favor of the wife from contributions of funds and services made by her toward its accumulation over, above, and beyond the performance of ordinary marital duties toward the husband."

The right which Mrs. Armstrong claimed to an equitable division of the property accumulated, as the result of her investment of capital and her labor, before and after the marriage, therefore, was not a mere incident of the marital status. It was a right *in personam*, which the ex parte Florida divorce could not and did not destroy.

V

The Florida Court Had No Jurisdiction to Deny Alimony

As we read the Florida statutes (Chapter 65, Sections 65.07-65.08) the jurisdiction of its courts to determine alimony can be invoked only by a wife; and if that be true the court had no alimony jurisdiction in this case. Those statutes and the fact that the fiction of matrimonial domicile is lacking or ineffective make up the wide difference between *Thompson* v. *Thompson* and this case. The court held, in the *Thompson* case, that under the laws of Virginia, the wife, since she was the offender, could not have alimony on a divorce decreed in favor of her husband. In this case if the respondent had invoked the jurisdiction of the Florida court to determine alimony, the chancellor would have been called upon to exercise

a reasonable discretion in granting alimony, since no claim was made she had been guilty of adultery. *Cowan* v. *Cowan*, 147 Fla. 473, 2 So. 2d 869.

If the foregoing is not correct then we suggest the court had no in personam jurisdiction in this case. The right of the respondent to an equitable division of the property here involved is a property right equal to and perhaps exceeding the property right which this court said Mrs. Estin had in her New York judgment.

If we take the liberty of paraphrasing the language of Mr. Justice Douglas in the *Estin* case, the lack of jurisdiction here may be stated as follows:

> The Florida decree, which recognizes that the courts of Ohio will have the ultimate determination of the question of property rights where the property itself is in the state of Ohio, and makes finding that the stock certificates and bonds are the property of the petitioner, and directs and specifically orders the respondent to return said stock certificates and bonds to the petitioner within fifteen (15) days from the entering of the decree, or be subject to an order for contempt, is nothing less than an attempt by Florida to restrain respondent from asserting her claim to an equitable division of that property. That is an attempt to exercise an in personam jurisdiction over a person not before the court. That may not be done since Florida has no power to adjudicate respondents rights in the property in Ohio, the Ohio courts need not give full faith and credit to that phase of the Florida judgment. A judgment of a court having no jurisdiction to render it is not entitled to the full faith and credit which the Constitution and the statute of the United States demand. (334 U. S. 548, 549).

In an effort to avoid the consequences of the *Estin* case the petitioner claims that distinctions between decrees in personam and in rem have long since lost their validity. The argument made in support of that contention appears to be founded

upon the claim that since the respondent had a residence in Florida prior to acquiring her separate domicile in Ohio and had actual notice of the Florida action that constructive service was all that was necessary to give the Florida court an *in personam* jurisdiction over her property rights. In *May* v. *Anderson*, 345 U. S. 528, this court said:

> "Separated as our issue is from that of the future interests of the children, we have before us the elemental question whether a court of a state, where a mother is neither domiciled, resident nor present, may cut off her immediate right to the care, custody, management and companionship of her minor children without having jurisdiction over her in personam. Rights far more precious to appellant than property rights will be cut off if she is to be bound by the Wisconsin award of custody.
>
> "'It is now too well settled to be open to further dispute that the 'full faith and credit' clause and the act of Congress passed pursuant to it do not entitle a judgment in personam to extraterritorial effect if it be made to appear that it was rendered without jurisdiction over the person sought to be bound.' *Baker* v. *Baker, Eccles & Co.*, 242 U. S. 394, 401, and see 403, 37 S. Ct. 152, 155, 61 L. ed. 386; *Thompson* v. *Whitman*, 18 Wall. 457, 21 L. ed. 897; *D'Arcy* v. *Ketchum*, 11 How. 165, 13 L. ed. 648.

"In *Estin* v. *Estin*, supra, and *Kreiger* v. *Kreiger*, supra, this court upheld the validity of a Nevada divorce obtained ex parte by a husband, resident in Nevada, insofar as it dissolved the bonds of matrimony. At the same time, we held Nevada powerless to cut off, in that proceeding, a spouse's right to financial support under the prior decree of another state. In the instant case, we recognize that a mother's right to custody of her children *is a personal right entitled to at least as much protection as her right to alimony.*" (Italics supplied.)

The father in that case had a better right to claim Wisconsin was the "matrimonial domicil" than the petitioner has to claim Florida was in this case; the mother had resided in Wisconsin before she apparently without justification, established her separate domicile in Ohio; and she was duly served by publication and had actual notice of the pendency of the Wisconsin action for divorce and custody of her children.

While he stops short of making the claim the petitioner seemingly argues that because of what the court said in *Mullane* v. *Hanover Bank and Trust Co.*, 339 U. S. 306, the decision in *May* v. *Anderson* should not have followed *Estin* v. *Estin* and related cases. We think it requires but a casual reading of the *Mullane* case to reach the conclusion that this court intended no such result.

VI

The Florida Court Did Not Deny Alimony

In view of the fact that the special masters report contained the following:

> "The question of the wife's alimony, if any, cannot be determined at this stage of the proceeding. At the present time the wife of the defendant has in her possession large sums of money belonging to the plaintiff and approximately $100,000.00 in stock and bonds. In addition thereto, she has a half interest in properties in the state of Ohio and other funds and properties not fully accounted for. I assume that this will be the subject matter of the litigation in Ohio, and that proper disposition will be made by the courts of that state."

and that the final decree contained the following:

> "This court takes recognition of the fact that litigation is now pending in the state of Ohio relative to the recovery of these stocks and bonds as well as the settle-

> ment of other matters concerning property rights between the parties. This court recognizes that the courts of Ohio will have the ultimate determination of the question of property rights where the property itself is in the state of Ohio, * * *"

it is difficult to find any merit in the petitioners repeated assertions, in his brief, that the Florida decree denied alimony.

When due consideration is given to the fact that the masters report was the subject of discussion between him and the petitioners Florida counsel and was not filed until after the agreement was made to pay him eight to ten times the fee that the court customarily allowed masters in uncontested divorce cases and that the decree was entered by the court on the day after the filing of the masters report, we think it is a reasonable assumption that both documents were cleverly prepared so as to give recognition to the fact that the Florida court had no jurisdiction to grant or deny an equitable division of property held by the respondent in Ohio and at the same time to so word the documents as to create obstacles in the path of the respondent in her pursuit of her remedy in the Ohio courts.

Be that as it may, an ex parte judgment for alimony, where there was no personal service and no appearance, is unenforcible in Florida, *Lucian* v. *Southern Ohio Bank and Trust Co.*, 156 Fla. 370, 23 So. 2nd. 674, *Peacock* v. *Peacock*, 160 Fla. 603, 36 So. 2nd. 206, and *Pawley* v. *Pawley*, supra, 28 A. L. R. 2d at page 1371. Under the Federal Statute such a judgment is entitled to no more faith and credit elsewhere than it is in Florida.

VII

No Part of the Florida Decree is Entitled to Full Faith and Credit

The special master's report contains the following:

> "A special masters fee in this cause has been settled by an agreement between the attorney for plaintiff and your master."

After the testimony was taken petitioners Florida attorney discussed with the special master his report (R. 291) and before the report was filed the agreement as to the fee was made (R. 292) which called for the payment of Two Hundred or Two Hundred Fifty Dollars. Since it was a private agreement the requirements of Section 62.07 Florida Statutes were not observed. The amount of the agreed fee was eight or ten times the amount customarily fixed by the court (Stipulation R. 311).

When this private agreement is considered in connection with the type of report filed it is possible the master was expressing his gratitude for not having to apply to the court to fix his compensation. At the last term this court decided *In Re Murchison*, 348, U. S. 894, and said:

> "A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered. This Court has said, however, that 'Every procedure which would offer a possible temptation to the average man as a judge . . . not to hold the balance nice, clear, and true between the State and the accused denies the latter due process of law.' Tumey v. State of Ohio, 273 U. S. 510, 532, 47 S Ct.

437, 444, 71 L. ed. 749. Such a stringent rule may sometimes bar trial by judges who have no actual bias, and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way *justice must satisfy the appearance of justice*'. Offutt v. United States, 348 U. S. 11, 14, 75 S. Ct. 11, 13." (Emphasis supplied.)

If we apply the foregoing to what transpired prior to the filing of the masters report, we feel justified in claiming that the Florida proceeding lacks due process of law, and that the entire Florida decree is not entitled to full faith and credit.

VIII

The Ohio Court Had Jurisdiction to Divide the General Motors Stock

The petitioner in his ARGUMENT II contends the Ohio court did not have jurisdiction to award to the respondent 1250 shares of General Motors stock; and to support that argument, *inter alia*, claims the Florida court had jurisdiction over the *res* entitling it to determine ownership whether the respondent had been personally served with summons or not. It is claimed that the situs of the stock was in Florida, the domicile of the registered owner; and this claim is said to be supported by *First National Bank of Boston* v. *Maine* and *Curry* v. *McCanless*. The petitioner overlooks the fact that *First National Bank of Boston* v. *Maine* was overruled in *State Tax Comm'n* v. *Aldrich*, 316 U. S. 174; and has failed to observe that *Curry* v. *McCanless* supports the holding in *Standard Oil Co.* v. *New Jersey*, 341 U. S. 428, where the court, at pages 439-440 said:

"It is true that fiction plays a part in the jurisprudential concept of control over intangibles. There is no fiction,

however, in the fact that choses in action, stock certificates and dividends held by the corporation, are property."

"We see no reason to doubt that, where the debtor and creditor are within the jurisdiction of a court, that court has constitutional power to deal with the debt. Since choses in action have no spatial or tangible existence, control over them can only arise from control or power over the persons whose relationships are the source of the rights and obligations." Estin v. Estin, 334 U. S. 541, 548, 68 S. Ct. 1213, 1218, 92 L. Ed. 1561. Situs of an intangible is fictional but control over parties whose judicially coerced action can make effective rights created by the chose in action enables the court with such control to dispose of the rights of the parties to the intangible. Since such power exists through the state's jurisdiction of the parties whose dealings have created the chose in action, we need not rely on the concept that the asset represented by the certificate or dividend is where the obligor is found."

The right of the Ohio court to determine and control ownership differs from the Florida case in that the Ohio court had before it the respondent as plaintiff, the General Motors Corporation, personally served, as a defendant and the petitioner, who entered his appearance, as a defendant, whereas in the Florida court General Motors Corporation was not a defendant and the respondent was only constructively served. The Florida court did not and could not impound the stock certificates whereas the Ohio court did have jurisdiction of the certificates through personal service on General Motors Corporation as the obligor. 341 U. S. 432. The Ohio court having an *in personam* "control or power over the persons whose relationships are the source of the rights and obligations" had complete jurisdiction to determine the question of ownership. Only General Motors Corporation could question

venue, and since it did not there was nothing to prevent the Ohio court from exercising that jurisdiction. *Perkins* v. *Benguet Consolidated Mining Co.*, 342 U. S. 437.

CONCLUSION

In the foregoing we have shown the Florida decree was not entitled to full faith and credit, such as would preclude a division of property and alimony; and, if such were not so, that res judicata as a defense to alimony was not pleaded and was waived.

Be that as it may, if res judicata had been pleaded, the Ohio court would then have been called upon to decide whether to give full faith and credit to that part of the Florida decree which reserved the determination of property rights to the Ohio courts, or to that part which it is claimed deprived the respondent of such rights. The inconsistent provisions are not proof of res judicata.

We respectfully submit, the judgment of the Supreme Court of Ohio, pertaining to alimony for respondent should be affirmed.

WALTER K. SIBBALD,
Attorney for Mary R. Armstrong,
Respondent.

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No. 38

In The

United States Supreme Court

OCTOBER TERM, 1955

RAYMOND C. ARMSTRONG,
Petitioner,

v.

MARY R. ARMSTRONG,
GENERAL MOTORS CORPORATION, et al.,
Respondents.

SUPPLEMENT TO BRIEF FOR MARY R. ARMSTRONG, RESPONDENT

HEADLEY, SIBBALD & TAFT,
WALTER K. SIBBALD,
906 First Natl. Bank Bldg.,
Cincinnati 2, Ohio,
Attorneys for Respondent,
Mary R. Armstrong

COURT INDEX PRESS INC. — Law Printers — 809 Walnut St. Cincinnati O.

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SUPPLEMENT TO BRIEF FOR MARY R. ARMSTRONG, RESPONDENT

As a supplement to the brief of the respondent Mary R. Armstrong, we attach excerpts from the brief filed in the trial court on behalf of the petitioner.

WALTER K. SIBBALD,
Attorney for Mary R. Armstrong, Respondent.

COURT OF COMMON PLEAS

DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

No. A-131104

MARY R. ARMSTRONG,
Plaintiff,

vs.

RAYMOND C. ARMSTRONG, et al.,
Defendants.

BRIEF ON BEHALF OF DEFENDANT RAYMOND C. ARMSTRONG

We agree with counsel for plaintiff that this case presents two prime questions, namely: (1) Is plaintiff entitled to a divorce? (2) Should a division of property be allowed to plaintiff? Our answer to both questions is in the negative

These two broad questions involve incidental questions. The Court having listened patiently and attentively to the testimony and having the exhibits, we do not intend to go into detail as to the evidence but will merely state briefly, in connection with the argument, the conclusions which we believe the evidence justifies.

I

PLAINTIFF IS NOT ENTITLED TO A DIVORCE

(a) The Florida divorce decree is binding upon plaintiff, is res judicata, and cannot be attacked collaterally by plaintiff in this Court.

(b) The Florida decree bars the present action of plaintiff for divorce in Ohio.

(c) Even if the Florida divorce decree were invalid, plaintiff has not proven in this action, a case for divorce against defendant.

(Argument Omitted.)

II

THE QUESTION OF THE GRANTING OF ALIMONY OR DIVISION OF PROPERTY

If plaintiff's action is barred by the Florida decree, as we contend, then this court can only award alimony, unless the evidence would have justified, but for the Florida decree, the granting of the divorce to plaintiff, in which case the Court would be authorized to make a division of property, as was done in the *Slapp* case. We contend that even if defendant had not been divorced in Florida, the evidence in this case would not justify this Court granting a divorce to plaintiff and that therefore the only question before the Court, is the allowance of alimony: *Durham* v. *Durham*, *104 Oh. St. 7*; *Davis* v. *Davis*, *42 Oh. L. Abs. 105*. Whether the Court decides to grant any alimony to plaintiff or to make any division of the property, we ask the Court to consider the following facts, deducible from the evidence in this case: (1) Plaintiff deserted defendant without cause; (2) Defendant through his hard work over

the years and his business ability created the estate that now exists; (3) Plaintiff did not bring anything to the marriage, did not advance any money to him for his business ventures or help him in his business; (4) Her actions in converting to her own use the contents of the safe deposit boxes and withdrawal of the monies from the joint bank accounts; (5) The ample provision that defendant made for plaintiff during their married life and particularly in placing in the joint names large amounts of real estate, much of which he received from his father and brothers, and the proceeds of a mortgage from the sale of real estate which was in his own name, the gifts of jewelry for her personal use, etc.

The Court should also take into consideration the fact that there is at present in the Sheriff's office an amount in excess of $20,000.00, the proceeds of the sale of real estate in the partition case pending in this Court, of which plaintiff will receive one-half, together with one-half of the proceeds of the sales of lots still to be sold in the partition case, which will probably give her several thousand dollars additional.

With reference to the home previously occupied by the parties in Miami, Florida, and the contents therein, we submit that that should not be taken into consideration in this case, as that has already been settled by the Florida decree, that Court having jurisdiction over the property in Florida.

The real estate in Florida was owned by an "estate by the entirety," by which a husband and wife each own an estate in the property. However,

> Estates by the entirety are dependent on the marital relation for continuance, both spouses being considered equally interested in the res, but the interest is not severable. Generally, absolute divorce destroys estates by entireties and converts husband and wife

into joint tenants or tenants in common, as if never married, in which relation they are equally interested, but partition may be secured by either." *Straus* v. *Straus*, *148 Fla. 23*.

See also *Kollar* v. *Kollar*, *155 Fla. 705*, *Sec. 689.15 Fla. Stat. (1941)*.

In the case of *Lovejoy* v. *Lovejoy*, *160 Fla. 652*, the Court awarded property which had been in the joint names of husband and wife, to the husband in connection with a divorce decree and in the most recent Florida case of *O'Connell* v. *O'Connell*, *45 So. (2) 882*, decided in 1950, it was held:

> "(2) Where property is purchased by husband and deeded to husband and wife jointly, an estate by the entirety is created * * *"
> "(3) Court justified in awarding to wife an interest in the joint property on divorce."

If alimony is to be awarded, we feel that $200.00 to $250.00 a month would be very reasonable and ample for plaintiff's support, when considered in connection with what she has already received and will receive as her half interest in the joint ownership property.

If the Court should feel that a division of property is justified in this case, then we feel that if the Court would grant plaintiff 325 shares of the *old* General Motors stock, which can be turned in for 650 shares of the new stock, which new stock pays $4.00 a share, she will have an income of $2,600.00 per year plus the principal value of the stock, the market value of which is $62.00 per share, or $40,300.00.

In any event, whether the Court feels that it is proper to grant plaintiff alimony or to make a division of property, plaintiff should be ordered to account to defendant for one-half of the monies taken from the joint bank

accounts, one-half of the Government bonds and all of the cash which she took from the safe deposit boxes and all of the jewelry (other than her personal jewelry) and a ..... name only, which plaintiff took from the joint safe deposit boxes.

Respectfully submitted,

JULIUS R. SAMUELS and,
BENJAMIN S. SCHWARTZ,
Attorneys for Defendant;
Raymond C. Armstrong.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 38

RAYMOND C. ARMSTRONG,

Petitioner,

v.

MARY R. ARMSTRONG,
GENERAL MOTORS CORPORATION, et al.,

Respondents.

PETITION FOR REHEARING

ROBERT N. GORMAN,
JAMES W. HENGELBROK,
805 Tri-State Building,
Cincinnati 2, Ohio,

JULIUS R. SAMUELS,
918 First National Bank Bldg.,
Cincinnati 2, Ohio,

Attorneys for Petitioner.

THE JOHNSON & HARDIN CO., LAW PRINTERS
CINCINNATI, OHIO

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PETITION FOR REHEARING

To the Honorable Chief Justice and Justices of the Supreme Court of the United States:

Petitioner respectfully submits that there are errors of both law and fact in the three opinions rendered in this cause on April 9, 1956. But for these erroneous statements, the case did "raise an important problem in the construction of the Full Faith and Credit Clause" which this court has left unanswered.

I.

In the majority opinion of Mr. Justice Minton it is stated that the Florida decree did not deny alimony to the respondent, but "we should construe its action as a refusal to pass on the question of alimony and thus avoid

the constitutional question as to its power to do so." Previously eleven judges in Ohio, who are now joined by four on this court, had held that the Florida decree did deny alimony.

While it could be true that the five are right and the fifteen are wrong, however, such odds should cause some of the five to doubt whether in that interpretation of the Florida decree they are even 51% right, as Justice Brandeis once said judges hope their conclusions are.

At least it should call for a re-examination of the Florida decree, not in a vacuum as the majority did, but in connection with other admitted facts and cases. Once this examination is made, it is obvious that the interpretation placed on the Florida decree by the majority is clearly wrong.

On October 2, 1951, when the Florida court entered its decree concerning divorce and alimony (R. 246), an action, filed on June 15, 1951 (R. 236), by Mrs. Armstrong, was pending in Ohio to partition the jointly owned real estate which was situated in Ohio. The Florida court could not determine the interests of the parties in that matter. Secondly, Mrs. Armstrong had taken the actual stock certificates, although unendorsed, to Ohio. She contended, in letters, that she had a right to possession of the certificates (R. 299). The Florida court could not reach up into Ohio and get that stock or make a decree about the certificates. The ownership of the Ohio real estate and the claim of equitable ownership to the unendorsed certificates had to be decided by the Ohio courts. *There was not, however, on October 2, 1951, any alimony action or even contemplated action for alimony and support filed in Ohio.* The divorce and alimony action was not filed by Mrs. Armstrong until February 1, 1952 (R. 13), after she had established a one year's residence in Ohio, which she did not have on October 2, 1951 (R. 46).

All the Florida court attempted to say was that the ownership of the real estate in Ohio, where a partition suit was pending, and the equitable claim of ownership of the stock, had to be decided by the Ohio courts, and could not be decided by the Florida court. However, in regard to any claim for *alimony, support* and *maintenance*, which is not a claim for specific property, such alimony claim was denied, and all rights in the Florida real estate were vested in the petitioner. That is the only construction that can be made of the Florida decree set forth on pp. 248-249 of the record. The Florida court merely recognized pending claims for property to real estate and intangibles then situated in Ohio, but specifically said and decreed "no award of alimony be made to the defendant."

This decree held that no award of alimony be made, but specifically held her rights to real estate by way of partition (the partition action had been filed June 15, 1951, R. 303) and her equitable claim to possession of the stock certificates taken by her (R. 297), being entirely separate and apart, were to be decided by the Ohio courts. An alimony action neither in Florida nor in Ohio is one for specific property. It is in both states an award for support *solely*. How the majority could so misconstrue the Florida decree it is difficult to understand, except that it was construed without reference to the pending claims of respondent in Ohio, which were of an entirely different nature than claims for alimony and support. To construe the decree in Florida otherwise is to read into it things that neither are there nor could be there.

II.

The separate concurring opinion of Mr. Justice Frankfurter is premised on the false assumption that alimony granted in Ohio is a division of property. The Ohio decree plainly shows on its fact that it was for alimony (R. 18), and was not in any sense a division of property.

Throughout the trial, the Court considered the issue as one of alimony (R. 129, 158, 168, 188), and respondent's counsel agreed that alimony was the issue:

> "The Court: I still don't see that that has any relevancy. Your claim is that this lady is entitled to a divorce. Your claim further is, as I take it, as your pleading set forth, that she is entitled to alimony.
> "Mr. Sibbald: That is right." (R. 158)

Alimony has been traditionally defined, in Ohio, as the "allowance which a husband may be compelled to pay to his wife for her maintenance when she is living apart from him, or has been divorced." 18 *Ohio Jur.* (2d) 6.

If alimony was denied in Florida it could not be granted in Ohio without disregarding the Full Faith and Credit Clause. The wife had a right to a division of the real estate in the partition suit, which has since been concluded, and a right to set up an equitable claim for ownership in the stock which she took to Ohio, but neither of those claims were in the nature of alimony. To make the distinction set forth in the separate concurring opinion is to hold that jurisdiction can be obtained by a wife who wrongfully takes unendorsed stock certificates out of the jurisdiction of the domicile. Jurisdiction should never be acquired by a wrongful act.

III.

While the opinion of Mr. Justice Black, concurred in by three other justices, rightfully states that the Florida decree denied alimony, its consideration of the full faith and credit clauses is clouded by three erroneous statements.

Petitioner never claimed "that it was impossible for Mrs. Armstrong to obtain a new domicile, separate and apart from that of her husband." Neither did petitioner ever claim that alimony depended "on which spouse is to blame in leaving the other." Neither separate domicile nor fault was involved in the argument of petitioner.

What petitioner claimed was that where a husband and wife lived in a state for twenty odd years, and had established their matrimonial domicile there, that the courts of that State had sufficient interest in the marriage relationship to completely settle all marital problems despite the fact that one spouse left the matrimonial domicile.

In the early days the courts of the matrimonial domicile were the only ones where the affairs could be settled. With the overruling of *Haddock* v. *Haddock*, 201 U. S. 562, all that was said was that the state of the matrimonial domicile did not have *exclusive* jurisdiction to settle the marriage ties. It never has been said, unless a future decision so holds, that the power of the matrimonial domicile to settle all of the family matters had completely been overruled.

We said that if a motorist, simply by using the highway, consents to personal jurisdiction in tort actions (*Hess* v. *Pawloski*, 274 U. S. 352), then certainly married couples who have lived twenty two years in a state have given their consent to the jurisdiction of that state to completely adjudicate their martial rights. As was said in *Mullane* v. *Hanover Bank & Trust Co.*, 339 U. S. 306, following the *International Shoe* case, such contacts were more than minimal, and were sufficient to hold that actual personal service was unnecessary.

Finally, the court makes this statement:—

> "The issue was tried in Ohio with both parties present, and the trial court expressly found that Mrs. Armstrong had returned to Ohio and was a 'resident' there within the meaning of the Ohio divorce statute at the time the Florida divorce proceedings were instituted. See Page's Ohio Rev. Code Ann., 1954, Sec. 3105.03. This statute has been uniformly interpreted by the Ohio courts to require residence accompanied by an intention to make the State of Ohio a permanent

home. See, e. g., *Saalfeld* v. *Saalfeld*, 86 Ohio App. 225, 89 N. E. (2d) 165. We would accept the Ohio court's finding that Mrs. Armstrong was such a resident of Ohio when the *Florida* suit was brought as amply supported by evidence in the record. Consequently the husband's reliance on *Milliken* v. *Meyer* is misplaced." (emphasis added).

The court fails to state that such a finding of residence was not made until July 18, 1953, (R. 16). The court fails to note that, at the time the *Florida* decree was granted (October 2, 1951), Mrs. Armstrong had not been a resident of Ohio for the one year period which is required, in order to bring an action for divorce and alimony, by the terms of Sec. 3105.03, Ohio Revised Code (formerly Sec. 8003-3, Ohio General Code, formerly Sec. 11980, Ohio General Code). See Record, p. 46. Therefore at the time of the hearing in Florida the legal rulings in *Milliken* v. *Meyer*, 311 U. S. 457, were clearly applicable.

We here refer to the statement in the concurring opinion (Frankfurter, J.) that the question, which petitioner raised and fifteen judges have decided was present, "would no doubt raise an important problem in the construction of the Full Faith and Credit Clause." The question has been clearly circumvented, we respectfully submit, not by the facts in the record, but by a misinterpretation of the record on the one hand, and by a failure to follow the lead of the late Chief Justice Stone in that the strictness of the rule in *Pennoyer* v. *Neff*, 95 U. S. 714 has given way to a test of "minimum contacts," and "traditional notions of fair play and substantial justice." *International Shoe Co.* v. *State of Washington*, 326 U. S. 310, 316.

There is nothing, however, in *Pennoyer* v. *Neff* inconsistent with the position taken by petitioner, for if Florida did not have jurisdiction to *fully* settle the marital affairs of the parties Armstrong, the complaining party was with-

out redress. The rule that the four concurring justices would establish would permit any fleeing spouse, whether husband or wife, not only to go forum shopping, but at the same time render it impossible for the courts of any state to fully adjudicate all domestic differences. *Williams v. North Carolina* merely said that the matrimonial domicile did not have *exclusive* right to make this settlement, but it did not endorse a proposal that the matrimonial state was stripped of the power so to do, and thereby prevent any state to completely solve all problems arising out of the marriage, including not only its dissolution, but rights of support, maintenance and alimony.

We most respectfully submit that by this decision the questions of marriage, divorce and alimony in so called migratory cases is left in a chaotic state. In conclusion, we most respectfully submit that a slight paraphrase of the words of the late Chief Justice Vinson seem appropriate:

> "At best the operation of the rule(s) which the Court today enunciates for the first time may be expected to confound confusion in a field already replete with complexities." *Trapiano v. United States*, 334 U. S. 669, 716.

CONCLUSION

If the majority would simply re-read the Florida decree of October 2, 1951 in the light of the then pending actions this court would be in a position to pass upon the "important problem in the construction of the Full Faith and Credit Clause."

Upon re-argument it could be demonstrated that there is nothing in *Milliken v. Meyer*, 311 U. S. 457, *Hess v. Pawloski*, 274 U. S. 352 or the contention of the petitioner that conflicts with *Pennoyer v. Neff*, supra.

While it is rare that re-hearings are granted, counsel does feel encouraged that in recent years, one was granted, and while the final result was not all that could be desired, at least the chaotic condition existing in lower courts was removed. Cf. *Friedberg* v. *United States*, 347 U. S. 916, 917; 347 U. S. 1006; 348 U. S. 142. We can only submit that this court should again re-examine its previous conclusions, which we respectfully submit are not based on the facts or the law applicable.

Respectfully submitted,

ROBERT N. GORMAN,
JAMES W. HENGELBROK,
805 Tri-State Building,
Cincinnati 2, Ohio,

JULIUS R. SAMUELS,
918 First National Bank Bldg.,
Cincinnati 2, Ohio,

Attorneys for Petitioner.

CERTIFICATE

Robert N. Gorman, counsel for petitioner, hereby certifies that this petition for re-hearing is presented in good faith and not for the purpose of delay.

ROBERT N. GORMAN